



Western Australia

Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004

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Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004

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Defined terms

Western Australia

Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004

An Act —

- **to ratify, and authorise the implementation of, an agreement between the State and The Pilbara Infrastructure Pty Ltd and Fortescue Metals Group Ltd relating to the development of a multi-user railway and multi-user port facilities in the Pilbara region of the State;**
 - **to amend the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000*,**
- and for incidental and other purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Part 3 comes into operation on a day fixed by proclamation.

Part 2 — General provisions about the Agreement

3. Terms used

In this Part —

2010 variation agreement means the agreement a copy of which is set out in Schedule 2;

2018 variation agreement means the agreement a copy of which is set out in Schedule 3;

Agreement means the scheduled agreement —

- (a) as varied from time to time in accordance with its terms; and
- (b) as varied by the 2010 variation agreement; and
- (c) as varied by the 2018 variation agreement.

scheduled agreement means the agreement of which a copy is set out in Schedule 1;

[Section 3 amended: No. 60 of 2010 s. 4; No. 6 of 2018 s. 4.]

4. Ratification and authorisation

(1) The scheduled agreement is ratified.

(2A) The 2010 variation agreement is ratified.

(2B) The 2018 variation agreement is ratified.

(2) The implementation of the Agreement is authorised.

[Section 4 amended: No. 60 of 2010 s. 5; No. 6 of 2018 s. 5.]

5. State empowered under clause 23

The State has power in accordance with clause 23 of the Agreement.

6. Effect on other laws

(1) The Agreement operates and takes effect despite any enactment or other law.

s. 7A

- (2) If a provision of the scheduled agreement, the 2010 variation agreement or the 2018 variation agreement expressly or by implication purports to modify or exclude the application or operation of an enactment for a purpose or in relation to a person or thing, the application or operation of the enactment is modified or excluded for that purpose, or in relation to that person or thing, to the extent or for the period mentioned in the provision or necessary for the provision to have effect.
- (3) To avoid doubt, it is declared that the provisions of the *Public Works Act 1902* section 96 do not apply to the railway constructed pursuant to the Agreement.
- (4) This section does not limit or otherwise affect the application of the *Government Agreements Act 1979*.

[Section 6 amended: No. 60 of 2010 s. 6; No. 6 of 2018 s. 6.]

7A. Validation of certain licences

- (1) The Special Railway Licence (**SRL**) granted or purportedly granted pursuant to the Agreement clause 14(1)(a) before the commencement of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010* section 7 is, and is taken always to have been, as valid as the SRL would have been if consent from each title holder in respect of the land affected by the SRL had been obtained as required by the Agreement clause 7(3).
- (2) Each Lateral Access Road Licence (**LARL**) granted or purportedly granted pursuant to the Agreement clause 14(1)(b) before the commencement of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010* section 7 is, and is taken always to have been, as valid as the LARL would have been if consent from each title holder in respect of the land affected by the LARL had been obtained as required by the Agreement clause 7(3).

[Section 7A inserted: No. 60 of 2010 s. 7.]

Part 3 — Provisions about access to the railway constructed under the Agreement

Division 1 — Amendment of the *Railways (Access) Act 1998*

7. *Railways (Access) Act 1998* amended

The amendments in this Division are to the *Railways (Access) Act 1998**.

[* *Reprinted as at 12 October 2001.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 323.]

8. Section 3 amended

Section 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical position —

“

TPI Railway and Port Agreement has the meaning given to the term “the Agreement” in the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* section 3.

”;

- (b) in the definition of “railways network” by deleting “and” after paragraph (b) and inserting —

“

- (ba) the railway constructed pursuant to the TPI Railway and Port Agreement; and

”.

9. Section 11B inserted

After section 11A the following section is inserted —

“

11B. Exception to sections 10 to 11A

- (1) Sections 10 to 11A do not apply if, in making an amendment to the Code, the Minister states that the

amendment is made under this section for the purpose of the application of the Code to the railway constructed pursuant to the TPI Railway and Port Agreement.

- (2) Subsection (1) does not apply to an amendment made after the expiration of the period of 3 years after the day of the coming into operation of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* section 13.

”.

Division 2 — Railways (Access) Code 2000

10. Railways (Access) Code 2000 amended

The amendments in this Division are to the *Railways (Access) Code 2000**.

[* *Published in Gazette 8 September 2000, p. 5123-81.*

For subsequent amendments see Gazette 23 July 2004.]

11. Section 3 amended

Section 3 is amended as follows:

- (a) by inserting in the appropriate alphabetical position —

“

TPI Railway and Port Agreement has the meaning given to the term “the Agreement” in the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* section 3.

”;

- (b) in the definition of “railways network” by deleting “and” after paragraph (b) and inserting —

“

- (ba) the railway constructed pursuant to the TPI Railway and Port Agreement; and

”.

12. Section 53 inserted

After section 52 the following section is inserted —

“

53. Further transitional provision

Until the Regulator publishes in the *Gazette* notice of a determination under subparagraph (ia) of clause 3(1)(a) of Schedule 4, the weighted average cost of capital for the railway infrastructure referred to in that subparagraph is such percentage as the Regulator fixes by notice published in the *Gazette* under this section.

”.

13. Schedule 1 amended

After Schedule 1 item 51 the following heading and item are inserted —

“

TPI Railway and Port Agreement Route

52. All tracks that are part of the railway constructed pursuant to the TPI Railway and Port Agreement.

”.

14. Schedule 4 amended

Schedule 4 clause 3(1)(a) is amended by deleting “and” after subparagraph (i) and inserting —

“

(ia) the railway infrastructure associated with that part of the railways network described in item 52 in that Schedule; and

”.

**Schedule 1 — Railway and Port (The Pilbara
Infrastructure Pty Ltd) Agreement**

[s. 3]

2004

THE STATE OF WESTERN AUSTRALIA

and

THE PILBARA INFRASTRUCTURE PTY LTD

ACN 103 096 340

and

FORTESCUE METALS GROUP LTD

ACN 002 594 872

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY
LTD) AGREEMENT**

State Solicitor's Office
Commercial and Conveyancing
141 St George's Terrace
Perth WA 6000
Telephone : (08) 9264 1888

THIS AGREEMENT is made this 10th day of November 2004

BETWEEN

THE HONOURABLE GEOFFREY IAN GALLOP, B.Ec., MA., MPhil., DPhil., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "**the State**") of the first part,

THE PILBARA INFRASTRUCTURE PTY LTD ACN 103 096 340 of Level 1, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter called "**the Company**" in which term shall be included its successors and permitted assigns) of the second part, and

FORTESCUE METALS GROUP LTD ACN 002 594 872 of Level 1, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter called "**the Guarantor**") of the third part.

WHEREAS:

- A. The Guarantor is investigating the feasibility of developing in the vicinity of the Chichester Ranges in the Pilbara region of Western Australia a project for the mining and sale, either within Australia or by export to overseas purchasers, of iron ore from the said region and is negotiating with the State a separate agreement to facilitate that mining development.
- B. The Guarantor is also proceeding with detailed feasibility studies for the Company to construct and operate a multi-user railway from in the vicinity of the Chichester Ranges to multi-user port facilities within the Port of Port Hedland, or to a location near the boundary of that port for delivery to such port facilities by multi-user conveyor, and such multi-user port facilities, for the shipping and export of iron ore products, freight goods and other products.
- C. The Company proposes that the railway, any facilities outside the port for the transfer of iron ore products, freight goods and other products to the port facilities, and the port facilities which are all to be constructed under this Agreement will operate under open third party access arrangements referred to in this Agreement.

- D. The State for the purpose of promoting development of the iron ore industry and employment opportunity generally in Western Australia, and for the purposes of promoting the development of multi-user infrastructure facilities in the Pilbara region of Western Australia, has agreed to assist the development of the above multi-user facilities upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context:

“**Access Act**” means the *Railways (Access) Act 1998*;

“**Access Code**” means the *Railways (Access) Code 2000*;

“**Additional Infrastructure**” means a conveyor, train unloading and other infrastructure necessary for the transport of iron ore products, freight goods or other products from the SRL Railway to the Company’s Port Facilities within the Port;

“**advise**”, “**apply**”, “**approve**”, “**approval**”, “**consent**”, “**certify**”, “**direct**”, “**notice**”, “**notify**”, “**request**”, or “**require**”, means advise, apply, approve, approval, consent, certify, direct, notice, notify, request or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“**approved proposal**” means a proposal approved or deemed to be approved under this Agreement;

“**Commonwealth**” means the Commonwealth of Australia and includes the Government for the time being thereof;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Government agreement**” has the meaning given in the *Government Agreements Act 1979*;

“**iron ore products**” includes iron ore of all grades and all products from the processing of iron ore;

“**LAA**” means the *Land Administration Act 1997*;

“**Lateral Access Roads**” has the meaning given in clause 7(1);

“**Lateral Access Road Licence**” means a miscellaneous licence granted pursuant to clause 14(1)(b) and according to the requirements of the

context describes the area of land from time to time the subject of that licence;

“laws relating to native title” means laws applicable from time to time in Western Australia in respect of native title and includes the *Native Title Act 1993* (Commonwealth);

“local government” means a local government established under the *Local Government Act 1995*;

“Mining Act” means the *Mining Act 1978*;

“Mining Agreement” means the agreement intended to be made in accordance with clause 38 for the purposes of assisting the establishment of iron ore mining operations in the vicinity of the Chichester Ranges;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“month” means calendar month;

“person” or **“persons”** includes bodies corporate;

“Pilbara Iron Ore Railways” means each railway constructed under a Government agreement which is located wholly or substantially in one or more of the local government districts of Ashburton, East Pilbara, Port Hedland and Roebourne at the date of this Agreement;

“Port” means the Port of Port Hedland;

“Port Additional Infrastructure” means that part of the Additional Infrastructure (if any) which is or is to be located (as the case may be) in the Port;

“Port Additional Infrastructure Area” means that part of the Port the subject of a subsisting agreement pursuant to clause 8(1)(b)(i);

“Port Additional Infrastructure Licence” means the licence granted to the Company under the Port Authorities Act as referred to in clause 14(7)(b) and according to the requirements of the context describes the area from time to time the subject of that licence;

“Port Authority” means the Port Hedland Port Authority, being the body corporate established for the Port under the Port Authorities Act;

“Port Authorities Act” means the *Port Authorities Act 1999*;

“Port Facilities” means facilities (excluding the Port Railway and Additional Infrastructure (if any)) necessary for the construction, operation and maintenance of a ship loading terminal, which may include train unloading, conveyor, stockpiling, ore blending, screening and loading facilities and a wharf;

“Port Facilities Area” means that part of the Port the subject of a subsisting agreement pursuant to clause 8(1)(a);

“Port Lease” means the lease granted to the Company under the Port Authorities Act as referred to in clause 14(7)(a) and according to the requirements of the context describes the area from time to time the subject of that lease;

“Port Railway” means that part of the Railway (if any) which is or is to be (as the case may be) located in the Port;

“Port Railway Area” means that part of the Port the subject of a subsisting agreement pursuant to clause 8(1)(c);

“Port Railway Licence” means the licence granted to the Company under the Port Authorities Act as referred to in clause 14(7)(c) and according to the requirements of the context describes the area from time to time the subject of that licence;

“Private Roads” means Lateral Access Roads and the Company’s access roads within the Railway Corridor;

“Project” means the construction and operation under this Agreement of the Railway, access roads, the Lateral Access Roads, the Additional Infrastructure (if any) and Port Facilities each approved pursuant to proposals submitted under clause 10, the provision of access (as defined in clause 16) to the Railway, the provision of rail transport services over the Railway and access (as defined in clause 18) to the Port Facilities and the Additional Infrastructure (if any);

“Rail Safety Act” means the *Rail Safety Act 1998*;

“Railway” means a standard gauge heavy haul railway initially from the mining area to be developed under the Mining Agreement in the vicinity of the Chichester Ranges in the Pilbara region of the said State to the Company’s Port Facilities within the Port or to a location near the boundary of the Port together with all railway track, associated

track structures including sidings, turning loops, over or under track structures, supports (including supports for equipment or items associated with the use of a railway) tunnels, bridges, train control systems, signalling systems, switch and other gear, communication systems, electric traction infrastructure, buildings (excluding office buildings, housing and freight centres), workshops and associated plant, machinery and equipment and including rolling stock maintenance facilities, terminal yards, depots, culverts and weigh bridges which railway is or is to be (as the case may be) the subject of approved proposals under clauses 10 and 11 of this Agreement and includes any extension or enlargement thereof which is the subject of approved proposals under clauses 12 or 13;

“Railway Corridor” means, prior to the grant of the Special Railway Licence, the land for the route of the SRL Railway, access roads (other than Lateral Access Roads) and such of the Additional Infrastructure (if any) which is to be located outside the Port and which is the subject of a subsisting agreement pursuant to clause 7(1) and upon the grant of the Special Railway Licence the land the subject of the Special Railway Licence less any portion of the Railway Corridor surrendered by the Company from time to time under the terms of the Special Railway Licence;

“Railway Operation Date” means the date of the first carriage of iron ore products, freight goods or other products over the Railway (other than for construction or commissioning purposes);

“said State” means the State of Western Australia;

“SRL Railway” means that part of the Railway which is or is to be (as the case may be) located outside the Port;

“Special Railway Licence” means the miscellaneous licence for railway and, if applicable, other purposes, granted to the Company pursuant to clause 14(1)(a) and according to the requirements of the context describes the area of land from time to time the subject of that licence;

“this Agreement”, **“hereof”** and **“hereunder”** refer to this Agreement, whether in its original form or as from time to time added to, varied or amended; and

“Trade Practices Act” means the *Trade Practices Act 1974* (Commonwealth).

Interpretation

2. (1) In this Agreement:
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than clause 30 to extend any period or date shall be without prejudice to the power of the Minister under clause 30;
 - (c) clause headings do not affect interpretation or construction;
 - (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other genders;
 - (f) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
 - (g) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;
 - (h) reference to the Access Code includes the amendments to that code for the time being in force and also any code established or made in substitution therefor or in lieu thereof;
 - (i) reference in this Agreement to any other document includes that document as from time to time added to, varied or amended and notwithstanding any change in the identity of the parties;
 - (j) reference to a clause or schedule is a reference to a clause or schedule to this Agreement, and a reference to a subclause or paragraph is a reference to the subclause of the clause or paragraph of the clause or subclause as the case may be in, or in relation to, which the reference is made;
 - (k) “including” means “including, but not limited to”; and
 - (l) reference to a “person” includes a body corporate.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with or to require the State or the Company to do anything contrary to any law relating to native title or any lawful obligation or requirement imposed on the State or the

Company as the case may be pursuant to any law relating to native title.

- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made by or under the EP Act.

Ratification and operation

3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia prior to 31 December 2004 or such later date as may be agreed between the parties hereto to ratify this Agreement. The State shall endeavour to secure the timely passage of such Bill as an Act.
- (2) The provisions of this Agreement other than this clause and clauses 1 and 2 will not come into operation until the Bill referred to in subclause (1) has been passed by the State Parliament of Western Australia and comes into operation as an Act and the Mining Agreement is signed by all of the parties to it.
- (3) If by 31 December 2005 the said Bill has not commenced to operate as an Act or the Mining Agreement has not been signed by all of the parties to it then, unless the parties hereto otherwise agree, this Agreement will then cease and determine and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the later of:
- (a) the date on which the said Bill commences to operate as an Act; and
 - (b) the date on which the Mining Agreement is signed by all of the parties to it,

all the provisions of this Agreement will operate and take effect despite any enactment or other law.

Initial obligations of the State

4. The State shall subject to the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon), and subject to the Company furnishing to the Minister the written consents referred to in clause 7(3)(a), arrange for the issue of requisite authority under the LAA to allow the Company to enter upon Crown land as defined in the LAA (including, if applicable, land the subject of a pastoral lease, but excluding land within the Port) with plant and equipment to carry out all works to the extent reasonably necessary for the purposes of undertaking its obligations under clause 5(1).

Initial obligations of the Company

5. (1) The Company shall continue field and office geological, geophysical, geotechnical, engineering and environmental investigations and studies and marketing and finance studies and other matters necessary for the purposes of clauses 7 and 8 and to enable it to finalise and to submit to the Minister the detailed proposals referred to in clause 10.
- (2) The Company shall keep the State fully informed in writing at quarterly intervals from the later of the dates specified in clause 3(4) as to the progress and results of its operations under subclause (1) and supply to the Minister such information in relation thereto as the Minister may request from time to time.
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish the Company to undertake.

Aboriginal Heritage Act 1972

6. For the purposes of this Agreement the *Aboriginal Heritage Act 1972* applies as if it were modified by:
- (a) the insertion before the full stop at the end of section 18(1) of the words:
- “
- and the expression “**the Company**” means the persons from time to time comprising “the Company” in their capacity as

such under the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872, in relation to the use or proposed use of land pursuant to that agreement after and in accordance with approved proposals under that agreement and in relation to the use of that land before any such approval of proposals where the Company has the requisite authority to enter upon and so use the land

”;

- (b) the insertion in sections 18(2), 18(4), 18(5) and 18(7) of the words “or the Company as the case may be” after the words “owner of any land”;
- (c) the insertion in section 18(3) of the words “or the Company as the case may be” after the words “the owner”;
- (d) the insertion of the following sentences at the end of section 18(3):

“

In relation to a notice from the Company the conditions that the Minister may specify can as appropriate include, among other conditions, a condition restricting the Company’s use of the relevant land to after the approval or deemed approval as the case may be under the abovementioned agreement of all of the Company’s submitted proposals thereunder for the Project (as defined in the abovementioned agreement), or in the case of additional proposals submitted or to be submitted by the Company to after the approval or deemed approval under that agreement of such additional proposals, and to the extent so approved.

”; and

- (e) the insertion in sections 18(2) and 18(5) of the words “or it as the case may be” after the word “he”.

The Company acknowledges that nothing in this clause 6 nor the granting of any consents under section 18 of the *Aboriginal Heritage Act 1972* will constitute or is to be construed as constituting the approval of any proposals submitted or to be submitted by the

Company under this Agreement or as the grant or promise of land tenure for the purposes of this Agreement.

Railway Corridor

7. (1) As soon as practicable during its studies under clause 5, and from time to time during those studies as required by either the Company or the State, the Company shall consult with the Minister to seek the agreement of the Minister as to:
- (a) where the SRL Railway will begin and end;
 - (b) a route for the SRL Railway, access roads to be within the Railway Corridor and Additional Infrastructure (if any) which is to be located outside the Port and the land required for that route;
 - (c) if Additional Infrastructure is to be located outside the Port, the nature and capacity of such Additional Infrastructure; and
 - (d) the routes of, and the land required for, roads outside the Railway Corridor for access to it to construct the SRL Railway (such roads as agreed being “**Lateral Access Roads**”).

In seeking such agreement, regard shall be had to achieving a balance between engineering matters including costs, the nature and use of any lands concerned and interests therein and the costs of acquiring the land (all of which shall be borne by the Company). The parties acknowledge the intention is for the Company to construct the SRL Railway, the access roads which are to be within the Railway Corridor and the relevant Additional Infrastructure (if any) along the centreline of the Railway Corridor subject to changes in that alignment to the extent necessary to avoid heritage, environmental or poor ground conditions that are not identified during preliminary investigation work. The provisions of clause 35 shall not apply to this subclause.

- (2) If the date by which the Company must submit detailed proposals under clause 10(1) is extended or varied by the Minister pursuant to clause 30, any agreement made pursuant to subclause (1) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (3) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining

in a form and substance acceptable to the Minister all consents of each such title holder to, and all statutory consents required in respect of the land affected for:

- (a) the issue of requisite authority under the LAA pursuant to clause 4 and the undertaking of the matters referred to in clause 5(1);
- (b) the grant of the Special Railway Licence for the construction, operation and maintenance within the Railway Corridor of the SRL Railway, access roads to be within the Railway Corridor and Additional Infrastructure (if any) to be located outside the Port; and
- (c) the grant of Lateral Access Road Licences for the construction, use and maintenance of Lateral Access Roads over the routes for the Lateral Access Roads agreed pursuant to clause 7(1),

in accordance with this Agreement. For the purposes of this subclause (3), “title holder” means a management body (as defined in the LAA) in respect of any part of the affected land, a person who holds a mining or petroleum right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the LAA in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person in whom any part of the affected land is vested, immediately before in respect of paragraph (a) the grant of the authority referred to therein and in respect of paragraphs (b) and (c) the provision of such consents to the Minister as referred to in clause 10(5)(b).

- (4) The parties acknowledge that, at the date of this Agreement, due to possible constraints on availability of land within the Port for the Railway, it is not settled whether the Railway will continue into the Port or whether it will cease at a point outside the Port, in which case the Company intends to construct a conveyor, train unloading and other infrastructure in order to transport iron ore products, freight goods or other products as the case may be from the Railway to within the Port. It is the preference of the State and the Company that the Railway continue into the Port and the Company shall proceed on that basis if there is land available within the Port for the Railway.

Port Facilities

8. (1) As soon as practicable during its studies under clause 5, and from time to time during those studies as required by either the Company or the State, the Company shall consult with the Minister to seek the agreement of the Minister as to:
- (a) an area of the Port to be the subject of the Port Lease and in which the Port Facilities are to be constructed;
 - (b) if there is to be any Port Additional Infrastructure:
 - (i) an area of the Port (which may be or include part of the Port Facilities Area) to be the subject of the Port Additional Infrastructure Licence and in which the Port Additional Infrastructure is to be constructed; and
 - (ii) the nature and characteristics of the Port Additional Infrastructure, including the capacity of the Port Additional Infrastructure;
 - (c) if any part of the Railway is to be in the Port, an area of the Port to be the subject of the Port Railway Licence and in which that part of the Railway and access roads to be located within the Port Railway Area are to be constructed; and
 - (d) the nature and characteristics of the Port Facilities, including the capacity of the Port Facilities.
- (2) If the date by which the Company must submit detailed proposals under clause 10(1) is extended or varied by the Minister pursuant to clause 30, any agreement made pursuant to subclause (1) before such date is extended or varied shall unless the Minister notifies the Company otherwise be deemed to be at an end and neither party shall have any claim against the other in respect of it.
- (3) The provisions of clause 35 shall not apply to this clause.

Community development plan

9. (1) In this clause, the term “community and social benefits” includes:
- (a) training and guaranteed employment for indigenous and non-indigenous persons living in the Pilbara region of the said State;
 - (b) regional development and local procurement of goods and services;

- (c) contribution to community services and facilities; and
 - (d) a regionally based workforce.
- (2) The Company acknowledges the need for community and social benefits flowing from this Agreement.
- (3) The Company agrees that, prior to the time at which it submits any proposals pursuant to clause 10, and, if required by the Minister, prior to the time at which it submits any additional proposals pursuant to clause 12 or 13, it shall:
- (a) consult with the relevant local government or local governments with respect to the need for community and social benefits in relation to the developments proposed;
 - (b) following such consultation, prepare a plan which describes the Company's proposed strategies for achieving community and social benefits in connection with the developments proposed, and such plan shall include a process for regular consultation by the Company with the relevant local government or local governments in respect of the strategies; and
 - (c) submit to the Minister the plan prepared pursuant to subclause (3)(b) and confer with the Minister in respect of the plan.
- (4) The Minister shall within one month after receipt of a plan submitted under subclause (3)(c), either notify the Company that the Minister approves the plan as submitted or notify the Company of changes which the Minister requires be made to the plan. If the Company is unwilling to accept the changes which the Minister requires it shall notify the Minister to that effect and either party may refer to arbitration hereunder the question of the reasonableness of the changes required by the Minister.
- (5) The effect of an award made on an arbitration pursuant to subclause (4) shall be that the plan submitted by the Company pursuant to subclause (3)(c) shall, with such changes required by the Minister under subclause (4) as the arbitrator determines to be reasonable (with or without modification by the arbitrator), be deemed to be the plan approved by the Minister under this clause.

- (6) During the continuance of this Agreement, the Company shall implement the plan approved or deemed to be approved by the Minister under this clause.
- (7) The Company shall report to the Minister about the results of its periodic ongoing consultation with the relevant local government or local governments in accordance with the plan approved or deemed to be approved by the Minister under this clause and as soon as practicable after each such consultation takes place.
- (8) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan approved or deemed to be approved by the Minister under this clause and may agree to amendment of the plan or adoption of a new plan. Any such amended plan or new plan will be deemed to be the plan approved by the Minister under this clause.

Company to submit proposals

10. (1) The Company shall, subject to the EP Act, the provisions of this Agreement, agreement at that time subsisting in respect of the matters required to be agreed pursuant to clauses 7(1) and 8(1) and approval of a plan as referred to in clause 9, submit to the Minister by 31 December 2005 to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any works are to be situated) with respect to undertaking of the Project, which proposals shall include the location, area, layout, design, materials and time program for the commencement and completion of construction or the provision (as the case may be) of each of the following matters namely:
- (a) the SRL Railway including fencing (if any) and crossing places within the Railway Corridor and the matters referred to in subclause (2)(a);
 - (b) Port Facilities within the Port Facilities Area;
 - (c) if any part of the Railway is to be in the Port, the Port Railway within the Port Railway Area including fencing (if any) and crossing places within the Port Railway Area and the matters referred to in subclause (2)(a);

- (d) Additional Infrastructure (if any) both within the Railway Corridor and the Port Additional Infrastructure Area;
 - (e) temporary accommodation and ancillary facilities for the railway workforce on, or in the vicinity of, the Railway Corridor and housing and other appropriate facilities elsewhere for the Company's workforce;
 - (f) water supply;
 - (g) energy supplies;
 - (h) access roads within the Railway Corridor, the Port Railway Area and the Port Additional Infrastructure Area (as the case may be) and Lateral Access Roads within the routes for those roads agreed between the Minister and the Company pursuant to clause 7(1) or 8(1) (as the case may be);
 - (i) any other works, services or facilities desired by the Company; and
 - (j) use of local labour, professional services, manufacturers, suppliers contractors and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors.
- (2) (a) Proposals as to the matters specified in subclause (1)(a) and (1)(c) must provide for the Railway to have:
- (i) a capacity which enables the transport of not less than 70 million tonnes of iron ore products per annum over the Railway; and
 - (ii) either without modifications or with modifications which are technically feasible at a reasonable cost, such characteristics as enable:
 - (A) rail operations of the kind carried out on the Pilbara Iron Ore Railways to be carried out on the Railway, and vice versa; and
 - (B) connection of the Railway to any one or more of the Pilbara Iron Ore Railways.
- (b) Proposals pursuant to subclause (1) must specify the matters agreed for the purpose pursuant to clauses 7(1) and 8(1) and must not be contrary to or inconsistent with such agreed matters.

- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or must if so required by the Minister, be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (j) of subclause (1), and until all of its proposals under this clause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this clause in respect of the subject matter of the withdrawn proposal.
- (4) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this clause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefor and shall, if required by the Minister consult with the Minister with respect thereto.
- (5) At the time when the Company submits the last of the said proposals pursuant to this clause, it shall:
- (a) furnish to the Minister's reasonable satisfaction evidence of:
 - (i) the financial capability of the Company to undertake the operations to which the said proposals refer;
 - (ii) all accreditations under the Rail Safety Act which are required to be held by the Company or any other person for the construction of the Railway;
 - (iii) all arrangements and agreements it has at that time made or proposes to make in respect of access (as defined in clause 16) to the Railway or in respect of transport of any iron ore products, freight goods or other products over the Railway, and in respect of access (as defined in clause 18) to the Port Facilities and the Additional Infrastructure (if any); and
 - (iv) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals; and

- (b) furnish to the Minister the written consents referred to in clause 7(3)(b) and 7(3)(c).

Consideration of proposals

11. (1) In respect of each proposal pursuant to clause 10(1) the Minister shall subject to the EP Act:
- (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in clause 10(1) not covered by the said proposal or until such time as clause 10(5) has been complied with by the Company; or
 - (c) require as a condition precedent to the giving of his approval to the said proposal that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this clause shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (2) The Minister shall within 2 months after the later of:
 - (a) receipt of proposals pursuant to clause 10(1);
 - (b) where the proposals are to be assessed under Part IV of the EP Act, service on the Minister of an authority under section 45(7) of the EP Act; and
 - (c) where a proposal will or may require the State to do any act which affects any native title rights and interests, completion of all processes required by laws relating to native title to be undertaken by the State before that act may be done by the State,

give notice to the Company of his decision in respect to the proposals.

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within 2 months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.
- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows:
 - (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
 - (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.
- (6) Notwithstanding any provision of this Agreement (other than clause 30) or that any matter required to be agreed pursuant to clauses 7(1) and 8(1) has not been agreed, or that the plan required to be approved pursuant to clause 9 has not been approved, or that under this clause any proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every proposal and matter required pursuant to clause 10 is so approved or determined by 31 December 2006 then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this

Agreement shall on the expiration of that period cease and determine subject however to the provisions of clause 32.

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the approved proposals in accordance with the terms thereof so that the Railway, the Lateral Access Roads, the Additional Infrastructure (if any) and the Port Facilities are constructed and operational within 3 years of the approval of the proposals.
- (8) Notwithstanding clause 28, the Minister may during the implementation of approved proposals approve variations to those proposals.
- (9) The Minister may extend the periods set forth in clause 10(1) and subclause (7) of this clause (in addition to any extension granted under clauses 29 and 30) upon request of the Company for such reasonable period or periods as the Minister considers appropriate to enable the Company to comply with laws relating to native title.

Additional proposals

12. (1) Subject to clause 13, if the Company at any time during the continuance of this Agreement desires to construct outside the Port a spur line connecting to the SRL Railway or desires to significantly modify, expand or otherwise vary its activities that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement (other than by the construction of a spur line) beyond those activities specified in any approved proposals it shall give notice of such desire to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including such matters mentioned in clause 10(1) as are relevant or as the Minister otherwise requires).
- (2) If the notice relates to a spur line, the provisions of clauses 4, 5, 7 and 9 shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.
- (3) Subject to the EP Act, the provisions of this Agreement and agreement at that time subsisting in respect of any matters required to be agreed pursuant to clause 7(1) as referred to in subclause (2), and approval of a plan as referred to in clause 9, the Company shall submit to the Minister within a reasonable timeframe, as determined by the Minister after receipt of the notice referred to in subclause (1), detailed

proposals in respect of the proposed construction of such spur line or the proposed modification, expansion or variation of its activities including such of the matters mentioned in clause 10(1) as the Minister may require.

- (4) The provisions of clause 10 (other than subclause 5(a)) and clause 11 (other than subclauses (5)(a), (6) and (7) of clause 11) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

Expansion of Project within the Port

13. (1) The Company shall not:

- (a) increase the capacity of Port Facilities or of Port Additional Infrastructure or of that part of the Railway within the Port as the case may be above that specified in approved proposals; or
- (b) change the nature and characteristics of Port Facilities or Port Additional Infrastructure from that specified in approved proposals; or
- (c) otherwise significantly modify, expand or vary its activities within the Port that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those specified in approved proposals,

without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this clause.

- (2) (a) If the Company desires to do anything mentioned in subclause (1) it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto (including such matters mentioned in paragraphs (e) - (g), (i) and (j) of clause 10(1) or as the Minister otherwise requires).
- (b) The Minister shall within one month of a notice under paragraph (a) of this subclause advise the Company whether or

not he approves in principle the proposed action by the Company so notified. An approval by the Minister under this subclause may be given subject to conditions including conditions as to the matters referred to in clauses 8(1)(b)(ii) and 8(1)(d) provided that any such condition shall not without the consent of the Company require variations of:

- (i) the term of the Special Railway Licence, Lateral Access Road Licences, the Port Lease, the Port Infrastructure Licence or the Port Railway Licence;
- (ii) the rentals payable under any lease or licence granted under or pursuant to this Agreement; or
- (iii) this Agreement.

The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this subclause.

- (3) (a) If the Minister approves in principle the proposed action of the Company the Company shall within 18 months or such longer period as the Minister may from time to time allow of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval, otherwise that approval shall lapse.
 - (b) The Company acknowledges that the provisions of clause 9 must be complied with before the Company submits its detailed proposals and that notwithstanding the plan required to be approved pursuant to clause 9 has not been approved, the Minister's in-principle approval will lapse as provided in paragraph (a) if the Company's detailed proposals are not submitted within the time required by that paragraph.
 - (c) The provisions of clause 12(4) shall apply to detailed proposals submitted pursuant to this subclause.
- (4) On and after approval or determination of any such proposal pursuant to subclause (3)(c) the provisions of this clause shall apply mutatis mutandis to any subsequent desires of the Company referred to in subclause (1).

Grant of Licences and Lease

14. (1) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to clause 10(1) have been approved or deemed to be approved and the Company has complied with the provisions of clause 10(5), the State notwithstanding the Mining Act shall cause to be granted to the Company:
- (a) a miscellaneous licence to conduct within the Railway Corridor and in accordance with its approved proposals all activities (excluding the taking of stone, sand, clay and gravel) necessary for the planning, design, construction, commissioning, operation and maintenance within the Railway Corridor of the SRL Railway, access roads and such of the Additional Infrastructure (if any) which is to be located outside the Port (**“the Special Railway Licence”**) such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 1 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at a rental calculated in accordance with the Mining Act:
 - (i) prior to the Railway Operation Date, as if the width of the Railway Corridor were 100 metres; and
 - (ii) on and from the Railway Operation Date, at the rentals from time to time prescribed under the Mining Act; and
 - (b) a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (each **“Lateral Access Road Licence”**), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 2 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.
- (2) Notwithstanding the Mining Act, the term of the Special Railway Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 50 years commencing on the date of grant thereof.

- (3) Notwithstanding the Mining Act, the term of any Lateral Access Road Licence shall, subject to the sooner determination thereof on the cessation or sooner determination of this Agreement, be for a period of 4 years commencing on the date of grant thereof.
- (4) Notwithstanding the Mining Act, and except as required to do so by the terms of the Special Railway Licence, the Company shall not be entitled to surrender the Special Railway Licence or any Lateral Access Road Licence or any part or parts of them without the prior consent of the Minister.
- (5) For the purposes of this Agreement and without limiting the operation of subclauses (1) to (4) above and subclause (6), the application of the Mining Act and the regulations made thereunder are specifically modified;
- (a) in section 91(1) by:
- (i) deleting “the mining registrar or the warden, in accordance with section 42 (as read with section 92)” and substituting “the Minister”;
 - (ii) deleting “any person” and substituting “the Company” (as defined in the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872”;
 - (iii) deleting “for any one or more of the purposes prescribed” and substituting “for the purpose specified in clause 14(1)(a), or for the purpose specified in clause 14(1)(b), of the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872”;

- (b) in section 91(3)(a), by deleting “prescribed form” and substituting “form required by the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872”;
- (c) by deleting sections 91(6), 91(9), 91(10) and 91B;
- (d) in section 92, by deleting “Sections 41, 42, 44, 46, 46A, 47 and 52(1a) apply,” and inserting “Section 46A (excluding in subsection (2)(a) “the mining registrar, the warden or”) applies,” and by deleting “in those provisions” and inserting “in that provision”;
- (e) by deleting the full stop at the end of the section 94(1) and inserting, “except to the extent otherwise provided in, or to the extent that such terms and conditions are inconsistent with, the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872.”;
- (f) by deleting sections 94(2), (3) and (4);
- (g) in section 96(1), by inserting after “miscellaneous licence” the words “(not being a miscellaneous licence granted pursuant to the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872)”;
- (h) by deleting mining regulations 37(2), 37(3), 42 and 42A; and
- (i) by inserting at the beginning of mining regulations 41(c) and (f) the words “subject to the agreement made on 10 November 2004 between The Honourable Geoffrey Ian Gallop, Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to

time, The Pilbara Infrastructure Pty Ltd ACN 103 096 340 and Fortescue Metals Group Ltd ACN 002 594 872.”.

- (6) If any spur line to the SRL Railway is the subject of additional proposals approved in accordance with clause 12, the Minister shall include such spur line in the Special Railway Licence by endorsement.
- (7) On application by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after all its proposals submitted pursuant to clause 10(1) have been approved or deemed to be approved and the Company has complied with the provisions of clause 10(5), the State shall arrange to have the Port Authority grant to the Company under the Port Authorities Act:
- (a) a lease to allow in accordance with its approved proposals the construction, operation and maintenance within the Port Facilities Area of the Port Facilities (“**Port Lease**”); and
 - (b) if there is to be any Port Additional Infrastructure, a licence to allow in accordance with its approved proposals the construction, operation and maintenance within the Port Additional Infrastructure Area of the Port Additional Infrastructure and access roads (“**Port Additional Infrastructure Licence**”); or
 - (c) if any part of the Railway is to be in the Port, a licence to allow in accordance with its approved proposals the construction, operation and maintenance within the Port Railway Area of the Railway and access roads (“**Port Railway Licence**”),

each for a term which commences on the date of grant thereof and which ends at the same time as the Special Railway Licence and on such terms and conditions including rental as shall be reasonable and as are consistent with the terms of this Agreement and with approved proposals.

- (8) The State shall ensure that the Port Authority does not:
- (a) charge the Company a rental on a basis which is different from the basis on which the Port Authority charges other users of the Port for rentals; or

- (b) impose on the Company charges (other than rentals) for services or matters (including for port enhancement) which are different from charges which the Port Authority imposes on other users of the Port for the same services or matters,

except:

- (c) where and to the extent that such a difference can be commercially justified by the Port Authority on reasonable grounds; or
- (d) where, in any particular case of a difference between a rental or charge imposed on the Company and a rental or charge imposed on another user of the Port, the rental or charge which the Port Authority imposes upon that other user is required to be imposed at a particular rate or level due to a legally binding obligation owed by the Port Authority to the other user which is in existence at the date of this Agreement and the Port Authority is not subject to a similar obligation owed to the Company;
- (e) where the differences in the charge reasonably and consistently recognize the contribution to common user infrastructure by another user and where the monies raised by such charges, together with all interest earned on that money, less the proportion of the dividend payable by the Port Authority from time to time under section 84 of the Port Authorities Act and of the tax equivalent sum payable by the Port Authority from time to time under the *State Enterprises (Commonwealth Tax Equivalents) Act 1996*, are applied, or will be applied, to the provision of further common user infrastructure.

Construction and Operation of Railway and Additional Infrastructure

15. (1) Subject to and in accordance with approved proposals, the Rail Safety Act and the State having assured to the Company all necessary rights over Crown land (as defined in the LAA) available for the purpose the Company shall in a proper and workmanlike manner and in accordance with recognised standards for railways of a similar nature operating under similar conditions construct the Railway and associated access roads within the Railway Corridor and the Port Railway Area and shall also construct inter alia any necessary sidings, crossing points, bridges, signalling switches and other works and appurtenances and provide for crossings and (where appropriate and required by the Minister) grade separation or other protective devices

including flashing lights and boom gates at places where the Railway crosses or intersects with major roads or existing railways.

- (2) The Company shall during the continuance of this Agreement:
- (a) keep the Railway and any Additional Infrastructure constructed under this Agreement in operation;
 - (b) ensure that the Railway and any Additional Infrastructure constructed under this Agreement are operated in a safe and proper manner in compliance with all applicable laws from time to time; and
 - (c) without limiting subclause (2)(b) or clause 19, ensure that the obligations imposed under the Rail Safety Act on an owner and an operator (as those terms are therein defined) are complied with in connection with the Railway and (from such time as the Access Act and the Access Code apply to the Railway) ensure that the obligations imposed under the Access Act and the Access Code on a railway owner (as that term is therein defined) are complied with in connection with the Railway,

and nothing in this Agreement shall be construed to exempt the Company or any other person from compliance with the Rail Safety Act and (from such time as they apply as referred to in clause 16(2)) the Access Act and the Access Code, or limit their application to the Company's operations generally.

- (3) The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which now exist and the Company shall on reasonable terms and conditions allow such crossings for roads, railways, conveyors, pipelines and other utilities which may be constructed for future needs and which may be required to cross the Railway.
- (4) In relation to its use of the Railway when transporting passengers or carrying iron ore products, freight goods or other products, the Company shall not be deemed to be a common carrier at law or otherwise.
- (5) The Company shall at all times be the holder of the Special Railway Licence, Lateral Access Road Licences, the Port Additional Infrastructure Licence and the Port Railway Licence and (without limiting clause 34) shall at all times own manage and control the use

of the Railway and all Additional Infrastructure constructed under this Agreement.

- (6) The Company shall not be entitled to exclusive possession of the land the subject of the Special Railway Licence or any Lateral Access Road Licence to the intent that the State, the Minister, the Minister for Mines and any persons authorised by any of them from time to time shall be entitled to enter upon the land or any part of it at all reasonable times and on reasonable notice with all necessary vehicles, plant and equipment and for purposes related to this Agreement or such other purposes as they think fit but in doing so shall be subject to the reasonable directions of the Company so as not to unreasonably interfere with the Company's operations.
- (7) The Company's ownership of the Railway and Additional Infrastructure constructed under this Agreement shall not give it an interest in the land underlying them.
- (8) The Company shall not at any time without the prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of the Railway or Additional Infrastructure constructed under this Agreement, or permit this to occur, other than for the purpose of maintenance, repair, upgrade or renewal.
- (9) The Company shall use all reasonable endeavours to ensure that, during the continuance of this Agreement, the Railway has or could have, with modifications which are technically feasible at a reasonable cost, such characteristics as enable:
 - (a) rail operations of the kind carried out on the Pilbara Iron Ore Railways to be carried out on the Railway, and vice versa; and
 - (b) connection of the Railway to any one or more of the Pilbara Iron Ore Railways.
- (10) The Company shall, subject to and in accordance with approved proposals, in a proper and workmanlike manner, construct any Additional Infrastructure approved for construction under this Agreement and associated access roads and the Lateral Access Roads.
- (11) The Company shall:
 - (a) be responsible for the cost of construction and maintenance of all Private Roads;

- (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles (other than those engaged upon the Company's activities and its invitees and licensees and persons who have rights under the Access Act and the Access Code to use those roads) from using the Private Roads; and
 - (c) at any place where any Private Roads are constructed by the Company so as to cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Public Transport Authority as the case may be.
- (12) During the continuance of this Agreement the Company shall not trade in iron ore products.

Access Obligations for Railway

16. (1) For the purposes of this clause:

- (a) **“access”** includes use by persons of the Railway and the Company's access roads within the Railway Corridor and within the Port Railway Area but does not, for the purposes of subclause 5(c) or (7)(a) include use of the Company's rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, terminal yards and depots or other facilities which are not railway infrastructure (as that term is defined in the Access Act);
- (b) **“Access Date”** means the date on which all of the documents and matters referred to in subclause (8)(c) are approved or determined under the relevant section of the Access Act or of the Access Code;
- (c) **“agreement”** includes an agreement, commitment or arrangement which is binding or takes effect when made and an agreement, commitment or arrangement which becomes binding or takes effect during the currency of this Agreement with the giving of notice, lapse of time, occurrence of any event, passing of any date or for any other reason;
- (d) **“railway owner”** has the same meaning as in the Access Act;
- (e) **“Regulator”** has the same meaning as in the Access Act; and

- (f) “**year**” means the period of 12 months commencing on the Railway Operation Date or any subsequent period of 12 months during the continuance of this Agreement.
- (2) (a) The State and the Company intend that the Access Act and the Access Code shall apply to the Railway as soon as possible after the Railway is constructed but before the Railway Operation Date.
- (b) The Company shall from the date occurring 6 months before the date for completion of construction of the Railway specified in its time program for the commencement and completion of construction of the Railway submitted under clause 10(1), keep the Minister fully informed as to:
- (i) the progress of that construction and its likely completion; and
- (ii) the likely Railway Operation Date.
- (c) The Company shall on the Railway Operation Date notify the Minister that the first carriage of iron ore products, freight goods or other products as the case may be over the Railway (other than for construction or commissioning purposes) has occurred.
- (3) The Company acknowledges that one of the intentions of the State and the Company in entering into this Agreement is that the Access Act and the Access Code apply to and in respect of the Railway (but not to the Company’s rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, terminal yards and depots and any other facilities which are not railway infrastructure (as that term is defined in the Access Act) and access roads of the Company within the Railway Corridor and within the Port Railway Area. The Company:
- (a) acknowledges that the State shall from time to time be entitled to make such legislative changes as are necessary to achieve that purpose; and
- (b) shall do all such things as the Minister reasonably requests for the purposes of the Access Code applying and continuing to apply to and in respect of the Railway which are not inconsistent with this Agreement.

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- (4) During the period prior to the Access Date:
- (a) subject to subclause (4)(b), no agreement for access to the Railway or provision of rail transport services over the Railway (including for purposes of transport of iron ore products, freight goods or other products) shall be made without the prior consent of the Minister; and
 - (b) one or more agreements for access to the Railway or provision of rail transport services over the Railway for the purposes of the transport of iron ore products may be made without the prior consent of the Minister, but such agreements:
 - (i) shall only be entered into by the Company;
 - (ii) shall not, either alone or when taken together, allow or provide for the transport (whether by the Company or any other person using the Railway) of more than 45 million tonnes of iron ore products over the Railway in any year during the currency of this Agreement; and
 - (iii) shall comply with subclause (5).
- (5) The Company shall ensure that each agreement for access to the Railway or provision of rail transport services over the Railway entered into prior to the Access Date:
- (a) does not and will not in any way prevent alteration of practices or methods of operation in relation to control and management of the Railway and its use (including in respect of allocation and management of the use of train paths on the Railway and management of train control and operating standards for the Railway) to the extent necessary to comply with obligations of a railway owner in connection with the Railway under the Access Act and the Access Code after the Access Date (including obligations to comply with train management guidelines in connection with the Railway from time to time approved or determined under section 43 of the Access Code and directions given under that section, statements of policy in connection with the Railway from time to time approved or determined under section 44 of the Access Code and an arrangement from time to time approved, and directions from time to time given, under section 29 of the Access Act for or to the railway owner in respect of the Railway);

- (b) without limiting subclause (5)(a):
 - (i) does not and will not in any way limit the discretion of the Regulator in approving, determining or giving a direction in respect of train management guidelines in connection with the Railway under section 43 of the Access Code or approving or determining a statement of policy in connection with the Railway under section 44 of the Access Code or under section 29 of the Access Act approving an arrangement for or issuing a direction to the railway owner in respect of the Railway; and
 - (ii) provides that, if any provision of the agreement is inconsistent with a provision of the Access Act or the Access Code in effect as at the Access Date (other than a provision in Schedule 4 of the Access Code), or inconsistent with any statement, document, determination or other requirement issued, made, approved or determined under either or both of the Access Act and the Access Code as at the Access Date, the relevant provision of the Access Act or the Access Code or the statement, document, determination or other requirement (as the case may be) shall prevail over the provision of the agreement to the extent of that inconsistency;
- (c) does not impose on the Company obligations, or create in favour of any other person any interest, in relation to use of the Railway (including in relation to allocation of train paths on the Railway and management of train control for the Railway) which may in effect preclude other entities from access to the Railway in accordance with the Access Act and the Access Code;
- (d) would, if that agreement were an “access agreement” within the meaning of the Access Code, comply with sections 17(1)(a), 17(1)(c) and 36(2)(c) of the Access Code; and
- (e) is, with effect from the Access Date, altered to comply with and to be consistent with the Access Act and the Access Code (except Schedule 4 of the Access Code) as at that time and with each statement, document, determination and other requirement at that time issued, made, approved or determined under the Access Act or the Access Code as if the agreement were an access agreement (as that term is defined in the Access Code).

- (6) Without limiting clause 36, the Company must, during the currency of this Agreement, consult with and keep the State fully informed concerning any steps that the Company proposes to take or is taking, or concerning any steps which the Company is aware any other person proposes to take or is taking, to have the Railway made subject to Part IIIA of the Trade Practices Act.
- (7) The Company shall:
- (a) use all reasonable endeavours to promote access to, and attract customers for, the Railway; and
 - (b) not without the prior consent of the Minister enter into or allow to be entered into any agreement or arrangement, or otherwise adopt any practice, whereby the Railway is connected to another railway for the purpose of running rolling stock in a circuit over them, or whereby the Railway otherwise does not or cannot accommodate traffic moving in both directions.
- (8) The Company shall:
- (a) ensure that the publication referred to in section 6 of the Access Code is prepared and made available for purchase no later than 7 days after the Access Act and the Access Code apply to the Railway;
 - (b) ensure the submission to the Regulator of the arrangement for the railway owner in respect of the Railway required to be approved by the Regulator under section 29 of the Access Act, each of the statements in connection with the Railway required to be prepared and submitted to the Regulator under sections 43(3), 44(2), 46(1) and 47(1) of the Access Code and any other document the subject of a notice from the Minister to the Company, being a document which the Access Act or the Access Code requires to be submitted by a railway owner to the Regulator, no later than 7 days after the Access Act and the Access Code apply to the Railway or such earlier date specified in the Access Act or the Access Code (as the case may be) for preparation and submission of such arrangement or statements; and

- (c) conduct itself in such a manner as to, and do all such things as are reasonable to, facilitate the approval or determination of:
 - (i) train management guidelines in connection with the Railway under section 43 of the Access Code;
 - (ii) statements of policy in connection with the Railway under section 44 of the Access Code;
 - (iii) costing principles in connection with the Railway under section 46 of the Access Code;
 - (iv) over-payment rules in connection with the Railway under section 47 of the Access Code;
 - (v) an arrangement referred to in section 29(1) of the Access Act for the railway owner in respect of the Railway; and
 - (vi) any other document or matter the subject of a notice from the Minister to the Company, being a document or matter which the Access Act or the Access Code requires be approved or determined in connection with a railway owner,

as soon as possible after the Access Act and the Access Code apply to the Railway. Nothing in this subclause shall be taken to exempt the railway owner in respect of the Railway from any obligation or requirement of the railway owner under the Access Act or the Access Code.

Construction and Operation of Port Facilities

17. (1) Subject to and in accordance with approved proposals the Company shall:
- (a) construct the Port Facilities within the Port Facilities Area in a proper and workmanlike manner and in accordance with recognised standards for port facilities of a similar nature operating under similar conditions;
 - (b) keep the Port Facilities in operation; and
 - (c) ensure the Port Facilities are operated in a safe and proper manner in compliance with all applicable laws.

- (2) The Company shall at all times be the holder of the Port Lease and (without limiting clause 34) shall at all times manage and control the use of the Port Facilities.
- (3) The Company shall not at any time without prior consent of the Minister dismantle, sell or otherwise dispose of any part or parts of the Port Facilities constructed under this Agreement, or permit this to occur other than for the purpose of maintenance, repair, upgrade or renewal.

Access Obligations for Port Facilities and Additional Infrastructure

18. (1) For the purposes of this clause:

- (a) **“access”** includes use by persons of the services provided by Port Facilities and Additional Infrastructure constructed under this Agreement;
 - (b) **“Access Date” means** the day on which the access regime referred to in subclause (2) is approved by the Minister;
 - (c) **“agreement” includes** an agreement, commitment or arrangement which is binding or takes effect when made and an agreement, commitment or arrangement which becomes binding or takes effect during the currency of this Agreement with the giving of notice, lapse of time, occurrence of any event, passing of any date or for any other reason;
 - (d) **“Government Agreement Product” means** iron ore produced, or products derived from the processing of iron ore produced, from mining tenements or other titles granted under or pursuant to a Government agreement in existence at the date of this Agreement; and
 - (e) **“year” means the period** of 12 months commencing on the Railway Operation Date or any subsequent period of 12 months during the continuance of this Agreement.
- (2) Prior to the time at which iron ore products, freight goods or other products are first shipped from the Port Facilities constructed under this Agreement, the Company must have in place, and thereafter during the currency of this Agreement maintain, an access regime that is approved by the Minister which provides for access to the Port Facilities and any Additional Infrastructure that is constructed under

this Agreement. When considering whether an access regime proposed by the Company under this clause is acceptable, the Minister shall have regard to the principles for access contained in section 6(4) of the Competition Principles Agreement made on 11 April 1995 between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

- (3) During the continuance of this Agreement, the Company shall implement and comply with the access regime approved by the Minister under subclause (2).
- (4) During the period prior to the commencement of an access regime approved by the Minister under subclause (1), subject to subclause (9):
 - (a) and subject to subclause (4)(b), no agreement for access to or use by any person of Port Facilities or Additional Infrastructure constructed under this Agreement shall be made without the prior consent of the Minister (including for purposes of shipping of iron ore products, freight goods or other products);
 - (b) one or more agreements for access to Port Facilities and Additional Infrastructure constructed under this Agreement for the purposes of shipping or transport (as applicable) of iron ore products may be made without the prior consent of the Minister, but such agreements:
 - (i) shall only be entered into by the Company;
 - (ii) shall not, either alone or when taken together, allow or provide for the shipping (whether by the Company or any other person using Port Facilities or Additional Infrastructure constructed under this Agreement) of more than 45 million tonnes of iron ore products from the Port in any year during the currency of this Agreement; and
 - (iii) shall comply with subclause (5);and
 - (c) in the event the capacity of the Port Facilities is expanded to exceed 45 million tonnes per annum, the Company shall, subject to subclause (4)(a), provide persons, or ensure that persons are provided, with access to Port Facilities and Additional Infrastructure constructed under this Agreement on reasonable terms and conditions (having regard to the cost of

the Port Facilities or the Additional Infrastructure (as the case may be) to the Company).

- (5) The Company shall ensure that each agreement for access to the Port Facilities or Additional Infrastructure constructed under this Agreement which is entered into prior to the Access Date:
- (a) does not and will not prevent alteration of practices or methods of operation in relation to control and management of the Port Facilities and Additional Infrastructure constructed under this Agreement and their use (including in respect of allocation of berthing priority) to the extent necessary to comply with the obligations of the Company under the access regime approved by the Minister under subclause (2);
 - (b) without limiting subclause (5)(a), provides that, where any provision of the agreement is inconsistent with a provision of the access regime approved by the Minister under subclause (2), the relevant provision of the access regime shall prevail over the provision of the agreement to the extent of that inconsistency;
 - (c) does not impose on the Company obligations, or create in favour of any other person any interest, in relation to access to the Port Facilities or the Additional Infrastructure constructed under this Agreement which may in effect preclude other entities from access to the Port Facilities or the Additional Infrastructure constructed under this Agreement in accordance with the access regime approved by the Minister under subclause (2); and
 - (d) is, with effect from the Access Date, altered to comply with and to be consistent with the access regime approved by the Minister under subclause (2).
- (6) Without limiting clause 36, the Company must, during the currency of this Agreement, consult with and keep the State fully informed concerning any steps that the Company proposes to take or is taking, or concerning any steps which the Company is aware any other person proposes to take or is taking, to have Port Facilities or Additional Infrastructure constructed under this Agreement made subject to Part IIIA of the Trade Practices Act.

- (7) The Company shall use all reasonable endeavours to promote access to, and attract customers for, Port Facilities and Additional Infrastructure constructed under this Agreement.
- (8) Subject to clauses 9 and 13 the Company shall, provided such investment can be justified commercially, invest in additional infrastructure to expand the capacity of Port Facilities and Additional Infrastructure constructed under this Agreement to accommodate demand for access. The Company shall from time to time consult with the Minister at the Minister's request with respect to such investment and provide the Minister with such information and documents as the Minister requests to review whether such investment can be justified commercially. In the event of disagreement between the Minister and the Company with respect to whether any particular investment proposed can be justified commercially, it may be referred by either party to arbitration hereunder as a dispute between the Company and the State. Nothing in this clause limits the discretion of the Minister in approving an access regime under subclause (2), or limits the provisions of any access regime so approved.
- (9) The Port Facilities may not at any time, unless the Minister's prior consent is given, be subject to an agreement for shipping of Government Agreement Product.
- (10) Nothing in this Agreement shall be taken to limit the rights of the State to regulate access to the Port, Port Facilities and Additional Infrastructure in the future, or the Company's obligations to comply in respect of any such regulation.

Compliance with Laws

19. (1) In the construction operation maintenance and use of any work installation plant machinery equipment service or facility provided or controlled by the Company, the Company shall throughout the continuance of this Agreement comply with and observe the provisions hereof and subject thereto the laws for the time being in force in the said State.
- (2) The Company shall be responsible for obtaining such leases, authorities, permits and licences as it shall require for the obtaining of stone, sand, clay and gravel for the construction of the Railway, the Lateral Access Roads, Additional Infrastructure (if any) and the Port Facilities.

Maintenance

20. Throughout the continuance of this Agreement the Company shall at all times keep and maintain in good repair and working order and condition (which obligation includes, where necessary, replacing or renewing all parts which are worn out or in need of replacement or renewal due to their age or condition) the Railway, Additional Infrastructure (if any), and the Port Facilities and all such other works installations plant machinery and equipment for the time being the subject of this Agreement.

Use of local labour professional services and materials

21. (1) Except as otherwise agreed by the Minister the Company shall, for the purposes of this Agreement:

- (a) except in those cases where the Company can demonstrate it is not reasonable and economically practicable so to do, use labour available within the said State (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara region) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
- (b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State, or if such services are not available within the said State, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
- (c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
- (d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors

when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contracts; and

- (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation where price, delivery and service are otherwise equal or better.
- (2) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall:
- (a) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 10, submit a report to the Minister at quarterly intervals from the later of the dates specified in clause 3(4) to the date of the first submission of proposals under clause 10 and thereafter at monthly intervals until commissioning of the Railway and the Port Facilities and thereafter as requested by the Minister from time to time; and
 - (b) in respect of developments the subject or to be the subject (as the case may be) of proposals submitted under clause 12 or 13, submit a report to the Minister at quarterly intervals from the date on which it gives notice under clause 12(1) or 13(2)(a) as the case may be to the date of the first submission of proposals in connection with that notice under clause 12 or 13 as the case may be and thereafter at monthly intervals until commissioning of the developments the subject of the proposals approved

pursuant to clause 12 or 13 as the case may be and thereafter as requested by the Minister from time to time,

concerning its implementation of the provisions of this clause, together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.

- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

No discriminatory charges

22. Except as provided in this Agreement the State must not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local government or other authority of the State to impose, discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the activities of the Company in the conduct of the Project nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted or intended to be granted under this Agreement. In the application of this clause the conferral of rights upon parties to Government agreements shall be disregarded.

Taking of land for the purposes of this Agreement

23. (1) The State is hereby empowered, as and for a public work under Parts 9 and 10 of the LAA and the *Public Works Act 1902*, to take for the purposes of this Agreement any land (other than any part of the Port) which in the opinion of the Company is necessary for the Project and

which the Minister determines is appropriate to be taken for the Project (except any land the taking of which would be contrary to the provisions of a Government agreement entered into before the submission of the proposals relating to the proposed taking) and notwithstanding any other provisions of those Acts may license that land to the Company.

(2) In applying Parts 9 and 10 of the LAA and the *Public Works Act 1902* for the purposes of this Clause -

- (a) “land” in those Acts includes a legal or equitable estate or interest in land;
- (b) sections 170, 171, 172, 173, 174, 175 and 184 of the LAA do not apply; and
- (c) the LAA applies as if it were modified in section 177(2) by inserting -

(i) after “railway” the following -

“

or land is being taken pursuant to a Government agreement as defined in section 2 of the *Government Agreements Act 1979*

”;

(ii) after “that Act” the following -

“ or that Agreement as the case may be ”.

(3) The Company shall pay to the State on demand the costs of or incidental to any land taken at the request of and on behalf of the Company including but not limited to any compensation payable to any holder of native title or of native title rights and interests in the land.

No taking of land

24. Subject to the performance by the Company of its obligations under this Agreement, but without limiting clause 15(3) the State shall not, during the currency of this Agreement, without the consent of the Company, take or suffer or permit to be taken by any State instrumentality or by any local authority or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used

for the purpose of this Agreement or any of the works on the lands the subject of the Special Railway Licence and, without such consent (which shall not be unreasonably withheld), the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road, right-of-way, water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Company's activities under this Agreement.

Commonwealth licences and consents

25. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.
- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

Zoning

26. The State shall ensure after consultation with the relevant local governments that the lands the subject of the Special Railway Licence or a Lateral Access Road Licence shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or any State agency or instrumentality or by any local government or other authority of the State on the ground that such activities are contrary to any zoning by-law, regulation or order.

Assignment

27. (1) Subject to the provisions of this clause the Company may at any time with the consent of the Minister assign, mortgage, charge, sublet or dispose of to any person the whole or any part of the rights of the Company hereunder (including to ownership of the Railway and the Additional Infrastructure (if any) and its right to or as the holder of the Special Railway Licence, a Lateral Access Road Licence, the Port Lease, the Port Additional Infrastructure Licence or the Port Railway

Licence and of the obligations of the Company hereunder subject however in the case of an assignment or disposition to the assignee or donee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment or disposition.

- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company will at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provision of the Mining Act insofar as the same may apply:
 - (a) no assignment, mortgage, charge, sublease or disposition made or given of or over the Special Railway Licence or any other licence granted pursuant to this Agreement in accordance with the provisions of subclause (1) and the terms of consent thereunder; and
 - (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge,

shall require any approval or consent other than such consent as may be necessary under subclause (1) and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this clause) or because the same is not registered under the provisions of the Mining Act.

Variation or determination

- 28.** (1) The parties to this Agreement may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

- (2) The Minister shall cause any agreement made pursuant to subclause (1) to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.
- (4) The parties may at any time by mutual agreement determine this Agreement, PROVIDED THAT no matter in connection with a failure by the parties to agree under this subclause (4) shall be referable to arbitration hereunder.

Force majeure

29. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including (without limiting the generality of the foregoing) delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors, factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes must promptly give notice to the other party or parties of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

30. Notwithstanding any provision of this Agreement, the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

31. (1) If:
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the Special Railway Licence, a Lateral Access Road Licence, the Port Lease, the Port Additional Infrastructure Licence or the Port Railway Licence; or
 - (ii) the Company abandons or repudiates this Agreement or abandons or repudiates its activities under this Agreement,
- and such matter is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or if the matter is referred to arbitration, then within the period mentioned in subclause (3); or
- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under clause 27,

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State to the Company in terms of subclause (1)(a) must specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees, mortgagees, chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms

of clause 27 whose name and address for service of notice has previously been notified to the State by the Company or, any such assignee, mortgagee, chargee or disponent.

- (3) (a) If the Company contests the alleged default or other ground referred to in subclause (1)(a) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
- (b) If the question is decided against the Company, the Company must comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in subclause (1)(a) has not been remedied within a period of 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation or determination of Agreement

32. (1) On the cessation or determination of this Agreement:
- (a) except as otherwise agreed by the Minister the rights of the Company to, in or under this Agreement and the rights of the Company or any mortgagee or chargee to or in the Railway, Additional Infrastructure and Port Facilities constructed under this Agreement or to, in or under the Special Railway Licence, Lateral Access Road Licences (if still current), the Port Lease, the Port Additional Infrastructure Licence, and the Port Railway Licence, shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in

respect of any guarantee or indemnity given under this Agreement;

- (b) the Company shall forthwith pay to the State all money which may then have become payable or accrued due; and
- (c) save as aforesaid and as otherwise provided in this Agreement none of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

(2) Upon the cessation or determination of this Agreement:

- (a) the Minister may by notice to the Company require the Company to, at the Company's cost, remove the SRL Railway and any Additional Infrastructure from the Railway Corridor and return the land in the Railway Corridor to a condition as near as possible to the condition that land was in prior to the grant of authority under the LAA in respect of the land as contemplated by clause 4; and
- (b)
 - (i) the Port Facilities, that part of the Railway which is in the Port and the Port Additional Infrastructure constructed under this Agreement shall become and remain the absolute property of the Port Authority; and
 - (ii) unless the Minister gives notice under subclause (2)(a), the SRL Railway and Additional Infrastructure located outside the Port shall become and remain the absolute property of the State,

without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

Indemnity

33. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in

connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any relevant Act such indemnity will not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Subcontracting

34. Without affecting the liabilities of the parties under this Agreement each of the State and the Company will have the right from time to time to entrust to third parties the carrying out as their agent of any portions of the activities which it is authorised or obliged to carry out hereunder.

Arbitration

35. (1) Except as provided in this Agreement, any dispute or difference between the State and the Company arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of either of them under this Agreement or as to any matter to be agreed upon between them under this Agreement must, in default of agreement between them and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this clause will not apply to any case where the State, the Minister or any other Minister in the Government of the State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either the State or the Company, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties to the arbitration and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

36. The Company must during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices

37. Any notice consent or other writing authorised or required by this Agreement to be given or sent by the State to the Company or to the Guarantor will be deemed to have been duly given or sent if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post or handed to the Company or to the Guarantor as the case may be at its address hereinbefore set forth or other address in Western Australia nominated by the Company, or by the Guarantor as the case may be, to the Minister and by the Company or by the Guarantor to the State if signed on its behalf by any person or persons authorised by the Company or by its solicitors, or by the Guarantor or by its solicitors as the case may be, as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Mining Agreement

38. The State and the Guarantor shall negotiate the terms and conditions of the Mining Agreement and will use all reasonable endeavours to enter into the agreement by not later than 31 January 2005 or as soon thereafter as is practicable. The provisions of clause 35 shall not apply to this clause.

Guarantee of the Company's performance

39. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State or by the Minister to the Company whether or not notice thereof is given to the Guarantor by the State, the Guarantor hereby

guarantees to the State the due performance by the Company of all of the Company's obligations to be performed hereunder. The Minister may agree to release the Guarantor from this guarantee where the Minister is reasonably satisfied that the Company has the financial capacity to perform its obligations under this Agreement. Except as provided in a release given under this clause, the guarantee given under this clause 39 shall continue notwithstanding the cessation or determination of this Agreement.

Term of Agreement

40. (1) Subject to the provisions of clause 11(6) and clauses 31 and 32, this Agreement shall expire on the expiration or sooner determination or surrender of the Special Railway Licence.
- (2) Unless this Agreement has already determined, at any time after 1 January 2045, at the request of the Company, the State will confer with the Company with respect to agreeing to commence negotiations for a new agreement. The provisions of clause 35 shall not apply to this clause.

Applicable law

41. This Agreement is to be interpreted according to the law for the time being in force in the State of Western Australia.

SCHEDULE 1

WESTERN AUSTRALIA

RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY LTD) AGREEMENT ACT

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A RAILWAY AND OTHER PURPOSES

No.

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act [date] the State agreed to grant to The Pilbara Infrastructure Pty Ltd ACN 103 096 340 of Level 1, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction operation and maintenance of the SRL Railway (as defined in the Agreement and otherwise as provided in the Agreement) and, if applicable, other purposes AND WHEREAS the Company pursuant to clause 14(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act [date] the Company is hereby granted by this licence authority to conduct on the land the subject of this licence as more particularly delineated and described from time to time in the Schedule hereto all activities (excluding the taking of stone, sand, clay and gravel) necessary for the planning, design, construction, commissioning, operation and maintenance on the land the subject of this licence of the SRL Railway and Additional Infrastructure (as defined in the Agreement) and access roads to be located on the land the subject of this licence in accordance with the provisions of the Agreement and proposals approved under the Agreement, for the term of 50 years from the date hereof (subject to the sooner determination or cessation of the Agreement) and upon and subject to the terms covenants and conditions set out in the Agreement

SCHEDULE 2

WESTERN AUSTRALIA

RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY LTD) AGREEMENT ACT

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No.

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act [date] the State agreed to grant to The Pilbara Infrastructure Pty Ltd ACN 103 096 340 of Level 1, 46-50 Kings Park Road, West Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(1) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act [date] the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof subject to the sooner determination or cessation of the Agreement and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 14(1)(b) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the **HONOURABLE GEOFFREY IAN GALLOP** in the presence of:) [Signature]
)
)

Witness: [Signature]

Name: CLIVE MORRIS BROWN

THE COMMON SEAL of **THE PILBARA INFRASTRUCTURE PTY LTD** ACN 103 096 340 was hereunto affixed in accordance with its constitution in the presence of:) [C.S.]
)
)
)

Director: [Signature]

Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]

Name: ROD CAMPBELL

THE COMMON SEAL of **FORTESCUE METALS**) [C.S]
GROUP LTD ACN 002 594 872 was hereunto affixed in)
accordance with its constitution in the presence of:)

Director: [Signature]

Name: WILLIAM GRAEME ROWLEY

~~Director~~/Secretary: [Signature]

Name: ROD CAMPBELL

Schedule 2 — 2010 variation agreement

[s. 3]

[Heading inserted: No. 60 of 2010 s. 8.]

2010

**THE HONOURABLE COLIN JAMES BARNETT
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

AND

THE PILBARA INFRASTRUCTURE PTY LTD

ACN 103 096 340

AND

FORTESCUE METALS GROUP LTD

ACN 002 594 872

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY
LTD) AGREEMENT 2004**

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 19th day of November 2010

BETWEEN

THE HONOURABLE COLIN JAMES BARNETT MLA., Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time (**State**)

AND

THE PILBARA INFRASTRUCTURE PTY LTD ACN 103 096 340 of Level 2, 87 Adelaide Terrace, East Perth, Western Australia (**Company**)

AND

FORTESCUE METALS GROUP LTD ACN 002 594 872 of Level 2, 87 Adelaide Terrace, East Perth, Western Australia (**Guarantor**).

RECITALS

- A.** The State, the Company and the Guarantor are the parties to the agreement ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and which is referred to in this Agreement as the “**Principal Agreement**”.
- B.** The State, the Company and the Guarantor wish to vary the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

- 1.** Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.

2. The State shall sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and shall endeavour to secure its passage as an Act prior to 30 June 2011 or such later date as the parties may agree.
3.
 - (a) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
 - (b) If by 31 December 2011 or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and none of the parties shall have any claim against the other parties with respect to any matter or thing arising out of or done or performed or omitted to be done or performed under this Agreement.
4. The Principal Agreement is hereby varied as follows:
 - (1) in clause 1:
 - (a) by deleting the existing definition of “Additional Infrastructure” and substituting the following new definition:

“Additional Infrastructure” means:

 - (a) Train Loading Infrastructure;
 - (b) Train Unloading Infrastructure;
 - (c) a conveyor, train unloading and other infrastructure necessary for the transport of iron ore products, freight goods or other products from the SRL Railway to the Company’s Port Facilities within the Port;”;
 - (b) in the definition of “Lateral Access Road Licence” by inserting “or clause 14(1a) as the case may be” after “clause 14(1)(b)”;
 - (c) by inserting after the definition of “Pilbara Iron Ore Railways” the following new definition:

“Plan” means the plan marked “A” initialled by or on behalf of the parties for the purpose of identification and which shows the land the subject of the Special Railway Licence as at 18 November 2010;

- (d) in the definition of “Port Additional Infrastructure Area” by inserting “and after the grant of the Port Additional Infrastructure Licence means the area from time to time the subject of that licence” after “clause 8(1)(b)(i)”;
- (e) in the definition of “Port Additional Infrastructure Licence” by inserting “, as varied in accordance with clauses 14(10) or 14(11)” after “clause 14(7)(b)”;
- (f) by inserting after the definition of “Port Authorities Act” the following new definition:

“Port Authorities Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Port Authorities Act;
- (g) in the definition of “Port Facilities Area” by inserting “and after the grant of the Port Lease means the area from time to time the subject of that lease” after “clause 8(1)(a)”;
- (h) in the definition of “Port Lease” by inserting “, as varied in accordance with clause 14(10),” after “clause 14(7)(a)”;
- (i) in the definition of “Project” by deleting “each approved pursuant to proposals submitted under clause 10,” and substituting “in accordance with approved proposals and”;
- (j) in the definition of “Railway” by deleting “extension or enlargement” and substituting “expansion or extension”;
- (k) in the definition of “Railway Corridor” by:
 - (i) deleting “upon” and substituting “after”;
 - (ii) inserting “from time to time” between “land” and “the subject of the Special Railway Licence”; and
 - (iii) deleting “less any portion of the Railway Corridor surrendered by the Company from time to time in accordance with the terms of the Special Railway Licence”;
- (l) in the definition of “Railway Operation Date” by inserting “15 May 2008 being” after “means”;

(m) in the definition of “Special Railway Licence” by inserting “, as varied in accordance with clauses 14(4a), 14(4b), 14(6), 14(6a) or 14(6b),” after “clause 14(1)(a)”;

(n) by inserting after the definition of “Special Railway Licence” the following new definitions:

“**SRL Railway spur line**” means a standard gauge heavy haul railway spur line from a mine, or from in the vicinity of a mine, in the Pilbara region of the said State connecting to the SRL Railway (and whether to the initial railway line the subject of approved proposals under clauses 10 and 11 or to an expansion or extension thereof, including a spur line, which is the subject of additional proposals approved in accordance with clause 12) for transport upon the SRL Railway to the Port of iron ore products, freight goods or other products and for the avoidance of doubt includes the approved Christmas Creek to Cloud Break railway spur line and the proposed (as at 18 November 2010) Investigator railway spur line;

“**SRL Railway spur line Operation Date**” means in respect of a SRL Railway spur line, the date of the first carriage of iron ore products, freight goods or other products over that spur line (other than for construction or commissioning purposes);

(o) by deleting “and” at the end of the definition of “this Agreement”;

(p) by deleting the full stop at the end of the definition of “Trade Practices Act” and substituting a semi colon; and

(q) by inserting after the definition of “Trade Practices Act” the following new definitions:

“**Train Loading Infrastructure**” means conveyors, stockpile areas, blending and screening facilities, stackers, re-claimers and other infrastructure reasonably required for the loading of iron ore products, freight goods or other products onto the SRL Railway for transport to the Port;

“**Train Unloading Infrastructure**” means train unloading infrastructure reasonably required for the unloading of iron

ore from the SRL Railway to be processed at processing facilities in the vicinity of that train unloading infrastructure and with the resulting iron ore products then loaded onto the SRL Railway for transport to the Port; and

“**variation date**” means the date on which the Bill to ratify the agreement made on or about 19 November 2010 between the State, the Company and the Guarantor comes into operation as an Act.”;

- (2) in clause 4 by inserting “(unless the Minister otherwise allows)” after “and subject to the Company”;
- (3) in clause 6(a) by inserting “as varied from time to time” after “ACN 002 594 872”;
- (4) in clause 7(3) by:
 - (a) inserting “(except as required by any waiver pursuant to clause 4 for the issue of the requisite authority under the LAA as referred to in it)” between “and” and “for obtaining”;
 - (b) inserting “unconditional and irrevocable” between “all” and “consents”;
 - (c) inserting in paragraph (a) “(including as applying pursuant to clause 12(2))” after “clause 5(1)”;
 - (d) deleting the comma at the end of paragraph (c) and substituting “(including as applying pursuant to clause 12(2)); and”;
 - (e) inserting after paragraph (c) the following new paragraph:

“(d) the inclusion of additional land in the Special Railway Licence as referred to in clauses 14(6), 14(6a) or 14(6b) as the case may be.”;
 - (f) deleting “mining or petroleum right” and substituting “mining, petroleum or geothermal energy right”;
 - (g) deleting “(b) and (c)” and substituting “(b), (c) and (d)”;

- (h) inserting “including as applying pursuant to clauses 12(4) or 12A(3)(c) as the case may be or in respect of clause 14(6b) as referred to in that subclause” before the full stop at end of the clause;
- (5) by deleting the second sentence of clause 7(4);
- (6) in clause 9(3) by inserting “, 12A” after “12”;
- (7) in clause 12(1) by:
 - (a) deleting “clause 13” and substituting “clauses 12A and 13”;
 - (b) deleting the reference to “a spur line” where it appears first and substituting “a SRL Railway spur line”;
 - (c) inserting “otherwise” after “or desires to”; and
 - (d) inserting “and in the case of the proposed construction of a SRL Railway spur line, the proposed capacity of such spur line” before the full stop at the end of this clause;
- (8) in clause 12(2) by inserting “is given before the variation date and” after “If the notice”;
- (9) by inserting after subclause (2) of clause 12 the following new subclause:
 - “(2a) If the notice is given on or after the variation date and relates to a SRL Railway spur line, the Minister shall within one month of receipt of such notice advise the Company whether or not he approves in principle the proposed construction of such spur line. If the Minister gives in principle approval the Company may (but not otherwise) submit detailed proposals in respect thereof provided that the provisions of clauses 4, 5, 7 and 9 shall mutatis mutandis apply prior to submission of detailed proposals in respect thereof.”;
- (10) in clause 12(3) by inserting “(or in the case of a notice referred to in subclause (2a) after the giving of the Minister’s in-principle consent as referred to in that subclause)” after “in subclause (1)”;
- (11) in clause 12(4) by deleting “other than subclause (5)(a)” and substituting “other than subclause (2)(a)(i) and with the reference

in subclause (5)(b) to clause 7(3)(b) being read as a reference to clause 7(3)(d)”;

(12) by inserting after clause 12 the following new clause:

“12A. (1) The Company shall not be permitted to:

- (a) construct Train Loading Infrastructure or Train Unloading Infrastructure; or
- (b) change the nature and characteristics of Train Loading Infrastructure or Train Unloading Infrastructure from that specified in approved proposals,

without the prior consent of the Minister and approval of detailed proposals in regard thereto in accordance with this clause.

- (2) (a) If the Company desires to do anything mentioned in subclause (1) it shall give notice thereof to the Minister and furnish to the Minister with that notice an outline of its proposals in respect thereto including:
 - (i) of any area outside the Railway Corridor within which the Train Loading Infrastructure or Train Unloading Infrastructure is to be constructed;
 - (ii) the nature and characteristics of the Train Loading Infrastructure or Train Unloading Infrastructure to be constructed including the capacity of such infrastructure; and
 - (iii) such matters mentioned in paragraphs (e), (f), (g), (i) and (j) of clause 10(1) or as the Minister otherwise requires.
- (b) The Minister shall within one month of receipt of a notice under paragraph (a) of this subclause advise the Company whether or not he approves in principle the proposed action by

the Company so notified. An approval by the Minister under this subclause may be given subject to conditions including conditions as to the matters referred to in paragraph (a) (i) and (ii) provided that any such condition shall not without the consent of the Company require variations of:

- (i) the term of the Special Railway Licence, Lateral Access Road Licences, the Port Lease, the Port Additional Infrastructure Licence or the Port Railway Licence;
- (ii) the rentals payable under any lease or licence granted under or pursuant to this Agreement (except where the Company desires any additional land to be included in the Special Railway Licence); or
- (iii) this Agreement.

The Minister shall afford the Company full opportunity to consult with him in respect of any decision of the Minister under this subclause.

- (3) (a) If the Minister approves in principle the proposed action of the Company the Company shall within 18 months or such longer period as the Minister may from time to time allow of that approval submit to the Minister detailed proposals in respect thereof in accordance with any conditions of that approval, otherwise that approval shall lapse.
- (b) The Company acknowledges that the provisions of clause 9 must be complied with before the Company submits its detailed proposals and that notwithstanding the plan required to be approved pursuant to clause 9 has not been approved, the Minister's in-principle approval will lapse as provided in paragraph (a) if the Company's detailed

proposals are not submitted within the time required by that paragraph.

- (c) The provisions of clause 10 (with the reference in subclause (5)(b) to clause 7(3)(b) being read as a reference to clause 7(3)(d)) and clause 11 (other than subclauses (5)(a), (6) and (7) of clause 11) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

- (4) On and after approval or determination of any such proposal pursuant to subclause (3)(c) the provisions of this clause shall apply mutatis mutandis to any subsequent desires of the Company referred to in subclause (1).”;

(13) in clause 13(2) by:

- (a) in paragraph (a) deleting all the words after “proposals in respect thereto” and substituting:

“including:

- (i) if Port Facilities or Port Additional Infrastructure are to be constructed outside the then Port Facilities Area or Port Additional Infrastructure Area as the case may be:

- (A) the area or areas of the Port within which any such Port Facilities are to be constructed;

- (B) the nature and characteristics of such Port Facilities, including the capacity of the Port Facilities;
 - (C) the area or areas of the Port within which such Port Additional Infrastructure is to be constructed; and
 - (D) the nature and characteristics of such Port Additional Infrastructure, including the capacity of such Port Additional Infrastructure; and
- (ii) such matters mentioned in paragraphs (e) - (g), (i) and (j) of clause 10(1) or as the Minister otherwise requires.”; and
- (b) in paragraph (b):
- (i) inserting “(or within 2 months after receipt of such notice if it relates to the construction of Port Facilities or Port Additional Infrastructure as referred to in paragraph (a)(i))” after “under paragraph (a) of this subclause”;
 - (ii) deleting “clauses 8(1)(b)(ii) and 8(1)(d)” and substituting “paragraphs (a)(i)(A)-(D) of this subclause”; and
 - (iii) inserting in subparagraph (ii) “(except where the Company desires any additional area to be included in the Port Lease or the Port Additional Infrastructure Licence as the case may be)” after “pursuant to this Agreement”;
- (14) by deleting paragraph (c) of clause 13(3) and substituting the following new paragraphs:
- “(c) The provisions of clause 10 (with the reference in subclause (5)(b) to clauses 7(3)(b) and 7(3)(c) being read as references to paragraph (d) of this subclause) and clause 11 (other than subclauses (5)(a), (6) and (7) of clause 11) shall mutatis mutandis apply to detailed proposals submitted pursuant to this clause with the

proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals or licences required under that Act, the Company shall implement approved proposals pursuant to this clause in accordance with the terms thereof.

- (d) The Company acknowledges that it shall be responsible for liaising with every title holder in respect of the land affected and for obtaining in a form and substance acceptable to the Minister all unconditional and irrevocable consents of each such title holder to, and all statutory consents required in respect of the land affected for the inclusion of additional land in the Port Lease or the Port Additional Infrastructure Licence as referred to in clauses 14(10) or 14(11) as the case may be, in accordance with this Agreement. For the purposes of this paragraph (d) “title holder” means a person who holds a mining, petroleum or geothermal energy right (as defined in the LAA) in respect of any part of the affected land, a person who holds a lease or licence under the Port Authorities Act in respect of any part of the affected land, a person who holds any other title granted under or pursuant to a Government agreement in respect of any part of the affected land, a person who holds a lease or licence in respect of any part of the affected land under any other Act applying in the said State and a person (other than the Port Authority) in whom any part of the affected land is vested, immediately before the provision of such consents to the Minister as referred to in clause 10(5)(b) (as applying pursuant to paragraph (c) above). For the purpose of this paragraph (d) “title holder” does not include the Port Authority.”;

(15) by inserting after subclause (1) of clause 14 the following new subclause:

“(1a) On application made by the Company to the Minister in such manner as the Minister may determine, not later than 3 months after its proposals submitted pursuant to clause 12(1) for the construction of Lateral Access Roads for access to the Railway Corridor to construct a SRL Railway spur line have been approved or deemed to be approved and the Company has complied with the provisions of clause 10(5)(b) (as applying pursuant to clause 12(4)), the State notwithstanding the Mining Act shall cause to be granted to the Company a miscellaneous licence or licences to allow the construction, use and maintenance of Lateral Access Roads within the routes agreed for those Lateral Access Roads under clause 7(1) (as applying pursuant to clause 12(2)) (each a “**Lateral Access Road Licence**”), each such licence to be granted under and subject to, except as otherwise provided in this Agreement, the Mining Act in the form of Schedule 3 hereto and subject to such terms and conditions as the Minister for Mines may from time to time consider reasonable and at the rentals from time to time prescribed under the Mining Act.”;

(16) by inserting after subclause (4) of clause 14 the following new subclauses:

“(4a) The Special Railway Licence shall be deemed amended on the variation date by:

(a) the deletion of condition 1 in the schedule of conditions set out in it and the substitution of the following conditions:

“1. (a) The Company shall within 5 years after the variation date surrender in accordance with the provisions of the Mining Act those portions of this licence outlined and coloured red on the Plan which are then

not being specifically used, or approved for specific use, by the Company pursuant to an approved proposal.

- (b) If after 18 November 2010 land is included in this licence pursuant to clause 14(6) of the Agreement, the Company shall as soon as possible after the construction of the SRL Railway spur line upon the land surrender in accordance with the provisions of the Mining Act that land down to a maximum width of 100 metres or as otherwise approved by the Minister for the safe operation of that SRL Railway spur line and associated access road within that area of land.

For the purpose of the conditions the terms “approved proposal”, “Minister”, “Plan” and “variation date” have the meanings given in the Agreement.”; and

- (b) the deletion of “(excluding the taking of stone, sand, clay and gravel) and the substitution of “(including the taking of stone, sand, clay and gravel in accordance with the Agreement)”;
- and
- (c) the insertion under the heading “In this licence” of the following provision:
- “- Reference to “the Agreement” includes such agreement as varied from time to time.
- (4b) (a) From and including the variation date the Company may, in accordance with approved proposals, take stone, sand, clay and gravel:
- (i) from the land included in the Special Railway Licence pursuant to subclauses (6) (in accordance with approved proposals which were

- submitted after the variation date), (6a) or (6b) and while it is so included, for the construction, operation and maintenance of the Railway and Additional Infrastructure constructed within or approved for construction within the Railway Corridor; and
- (ii) subject to paragraph (b), from any other land within the Railway Corridor and while such land is part of the Railway Corridor, for the construction, operation and maintenance of the Railway and Additional Infrastructure constructed within or approved for construction within such Railway Corridor.
- (b) Before commencing the taking of stone, sand, clay or gravel as referred to in paragraphs (a)(ii) the Company must obtain the consent of all of the then underlying title holders of the land from which such taking is to occur.
- (c) Notwithstanding the Mining Act no royalty shall be payable under the Mining Act in respect of stone, sand, clay and gravel which the Company is permitted to obtain from the land the subject of the Special Railway Licence.”;
- (17) in clause 14(5) by:
- (a) deleting “and subclause (6)” and substituting “and subclauses (6), (6a) and (6b)”;
- (b) in paragraph (a)(ii):
- (i) deleting the quotation marks immediately after “the Company”; and
- (ii) inserting “as varied from time to time” after “ACN 002 594 872”;

- (c) inserting in paragraph (a)(iii):
 - (i) “or clause 14(1a)” after ““clause 14(1)(b)””; and
 - (ii) “as varied from time to time” after “ACN 002 594 872”; and
 - (d) by inserting in each of paragraphs (b), (e) and (i) “as varied from time to time” after “ACN 002 594 872”;
- (18) by deleting subclause (6) of clause 14 and inserting the following new subclauses:
- “(6) If additional proposals are approved in accordance with clause 12 for the construction of a SRL Railway spur line outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such construction is to occur in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.
 - (6a) If additional proposals are approved in accordance with clause 12A for the construction of Train Loading Infrastructure or Train Unloading Infrastructure outside the then Railway Corridor, the Minister for Mines shall include the area of land within which such infrastructure is approved for construction in the Special Railway Licence by endorsement. The area of such land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company’s expense.
 - (6b) Notwithstanding the provisions of the Mining Act the Company may apply to the Minister for that part of the land held by the Company under miscellaneous licence 45/199 which is outside the Port to be included in the Special Railway Licence. The Minister shall confer with the Minister for Mines in regard to such application and if the Minister shall approve the application the Minister for Mines shall upon surrender by the Company of that miscellaneous licence and the Company furnishing to the Minister the

written consents referred to in clause 7(3)(d) in respect of the land the subject of the Company's application include such land in the Special Railway Licence subject to such of the conditions of the surrendered miscellaneous licence as the Minister for Mines determines. In respect of such land:

- (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to same terms covenants and conditions as apply to the Special Railway Licence;
 - (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith; and
 - (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense.”;
- (19) by inserting after subclause (8) of clause 14 the following new subclauses:
- “(9) The Company shall not be entitled to surrender the Port Lease or Port Additional Infrastructure Licence or any part or parts of them without the prior consent of the Minister.
 - (10) If additional proposals are approved in accordance with clause 13 for the construction of Port Facilities outside the then Port Facilities Area or Port Additional Infrastructure outside the then Port Additional Infrastructure Area, the State shall not later than 3 months after approval of such additional proposals arrange for the Port Authority to grant to the Company a variation (consistent with the approved proposals and any conditions to which the Minister's in-principle approval under clause 13 was given) of the Port Lease and/or the Port Additional Infrastructure Licence as the case may be to include the area or areas within which such Port Facilities or Port Additional Infrastructure are to be constructed in the Port Facilities Area the subject of the Port Lease (in the case of Port Facilities) and in the Port Additional Infrastructure Area the subject of the Port

Additional Infrastructure Licence (in the case of Port Additional Infrastructure).

- (11) Concurrently with its application under clause 14(6b) the Company may apply to the Minister for that part of the land held by the Company under miscellaneous licence 45/199 which is within the Port to be included in the Port Additional Infrastructure Licence as part of the Port Additional Infrastructure Area the subject of the Port Additional Infrastructure Licence. The Minister shall confer with the Port Authorities Minister in regard to such application and if the Minister shall approve such application and the Company accepts any conditions subject to which the Minister's approval is given, then the State shall within 3 months after such approval, and subject to the Company surrendering such miscellaneous licence, arrange for the Port Authority to grant to the Company a variation (consistent with any conditions of the Minister's approval) of the Port Additional Infrastructure Licence to include such land in the Port Additional Infrastructure Licence as part of the Port Additional Infrastructure Area the subject of the Port Additional Infrastructure Licence.”;
- (20) in clause 16(1) by:
- (a) in the definition of “access” in paragraph (a) inserting “and, for the avoidance of doubt, does not in any event include use of Train Loading Infrastructure or Train Unloading Infrastructure constructed under this Agreement” after “Access Act””; and
- (b) inserting after the definition of “agreement” in paragraph (c) the following new paragraph:
- “(ca) “**Expansion Access Date**” in relation to an expansion or extension (including any spur line) of the Railway means the date on which all of the documents referred to in subclause (8)(d) are approved or determined under the relevant section of the Access Act or of the Access Code in connection with the expansion or extension of the Railway;”;
- (21) in clause 16(2) by:

- (a) deleting paragraph (a) and substituting the following new paragraph:
- “(a) The State and the Company intend that the Access Act and the Access Code shall apply:
- (i) to the Railway the subject of approved proposals under clauses 10 and 11 as soon as possible after that Railway is constructed but before the Railway Operation Date; and
 - (ii) to any expansion or extension thereof (including a spur line) the subject of approved proposals as soon as possible after such expansion or extension is constructed.”; and
- (b) inserting after paragraph (c) the following new paragraphs:
- “(d) The Company shall from the date occurring 6 months before the date for completion of construction of a SRL Railway spur line specified in its time program for the commencement and completion of construction of that spur line submitted under clause 12(1) keep the Minister fully informed as to:
- (i) the progress of that construction and its likely completion; and
 - (ii) in respect of it, the likely date SRL Railway spur line Operation Date.
- (e) The Company shall on the SRL Railway spur line Operation Date in respect of any SRL Railway spur line notify the Minister that the first carriage of iron ore products, freight goods or other products as the case may be over such spur line (other than for construction or commissioning purposes) has occurred.”;
- (22) in clause 16(3) by inserting “)” after “Access Act”);
- (23) by inserting after subclause (5) of clause 16 the following new subclause:

“(5a) The provisions of subclause (5) shall apply mutatis mutandis in respect of any expansion or extension (including any spur line) of the Railway on the basis that references in the provisions of subclause (5) to “Railway” are to be read as including the relevant expansion or extension and to “Access Date” are to be read as references to “Expansion Access Date”.;”;

(24) in clause 16(8) by:

(a) in paragraph (a) deleting “section 6” and substituting “Part 2A”;

(b) deleting “and” after paragraph (b);

(c) deleting the full stop after “apply to the Railway” at the end of paragraph (c) and substituting the following:

“; and

(d) ensure the submission to the Regulator within 3 months of the Access Act and the Access Code applying to any expansion or extension (including any spur line) of the Railway of new or amended guidelines, statements of policy, principles, rules, arrangements and other documents and matters referred to in this subclause (8) as may be required by the Access Act and the Access Code in respect of the relevant expansion or extension of the Railway and conduct itself in such manner as to, and do all such things as are reasonable to, facilitate the approval or determination of new or amended documents or matters.”;

(25) by inserting after subclause (8) of clause 16 the following new subclause:

“(9) The parties acknowledge, for the avoidance of doubt, that the Company may provide train loading services (using the Company’s Train Loading Infrastructure) or train unloading services (using the Company’s Train Unloading Infrastructure) to a third party either as part of their agreement for the Company to provide to the third party rail transport services over the Railway or separately to facilitate

access by that third party to the Railway pursuant to the Access Act and the Access Code.”;

- (26) in clause 18(1) by inserting after the definition of “Access Date” in paragraph (b) the following new paragraph:
- “(ba) “Additional Infrastructure” does not include Train Loading Infrastructure or Train Unloading Infrastructure;”;
- (27) in clause 18(2) by:
- (a) inserting “as well for the review of the regime from time to time” after “constructed under this Agreement”;
- (b) inserting “and in reviewing the regime from time to time” after “this clause is acceptable”; and
- (c) deleting “(4)” after “6”;
- (28) in clause 18(3) by inserting “from time to time” after “regime approved”;
- (29) in clause 19(2) by deleting “The” and substituting “Except as otherwise provided in this Agreement, the”;
- (30) in clause 21(3)(b) by:
- (a) inserting “, 12A” between “12 or 13” in both places;
- (b) inserting “, 12A(2)” between “12(1) and 13(2)(a)”;
- (31) inserting after Schedule 2 the following new Schedule:

“SCHEDULE 3

WESTERN AUSTRALIA

RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY LTD) AGREEMENT ACT 2004

MINING ACT 1978

MISCELLANEOUS LICENCE FOR A LATERAL ACCESS ROAD

No.

WHEREAS by the Agreement (hereinafter called “the Agreement”) ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004*

the State agreed to grant to The Pilbara Infrastructure Pty Ltd ACN 103 096 340 of Level 2, 87 Adelaide Terrace, East Perth, Western Australia (hereinafter with its successors and permitted assigns called “the Company”) a miscellaneous licence for the construction use and maintenance of the Lateral Access Roads (as defined in the Agreement) AND WHEREAS the Company pursuant to clause 14(1a) of the Agreement has made application for the said licence;

NOW in consideration of the rents reserved by and the provisions of the Agreement and in pursuance of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* the Company is hereby authorised to construct use and maintain a road on the land more particularly delineated and described from time to time in the Schedule hereto in accordance with the provisions of the Agreement and proposals approved under the Agreement for a term of 4 years commencing on the date hereof subject to the sooner determination or cessation of the Agreement and for the purposes and upon and subject to the terms covenants and conditions set out in the Agreement and the *Mining Act 1978* as it applies to this licence, and any amendments to the Agreement and the *Mining Act 1978* from time to time and to the terms and conditions (if any) now or hereafter endorsed hereon and the payment of rentals in respect of this licence in accordance with clause 14(1a) of the Agreement PROVIDED ALWAYS that this licence shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this licence:

- If the Company be more than one the liability of the Company hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws of the time being in force thereunder.
- Reference to “the Agreement” includes such agreement as varied from time to time.

ENDORSEMENTS

1. [Land to be surveyed at Company’s cost]
2. [Any further terms and conditions or stipulations as the Minister for Mines may, consistent with the provisions of the Agreement, determine and thereafter impose in respect of the licence, including during the term of the Agreement.]

[Schedule 2 inserted: No. 60 of 2010 s. 8.]

Schedule 3 — 2018 variation agreement

[s. 3]

[Heading inserted: No. 6 of 2018 s 7.]

2018

THE HONOURABLE MARK McGOWAN

THE STATE OF WESTERN AUSTRALIA

and

THE PILBARA INFRASTRUCTURE PTY LTD

ACN 103 096 340

and

FORTESCUE METALS GROUP LTD

ACN 002 594 872

**RAILWAY AND PORT (THE PILBARA INFRASTRUCTURE PTY
LTD) AGREEMENT 2004**

RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 13th day of March 2018

BETWEEN

THE HONOURABLE MARK McGOWAN, BA LLB MLA, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called the "**State**") of the first part,

AND

THE PILBARA INFRASTRUCTURE PTY LTD ACN 103 096 340 of 87 Adelaide Terrace, East Perth, Western Australia, (hereinafter called the "**Company**" in which term shall be included its successors and permitted assigns) of the second part,

AND

FORTESCUE METALS GROUP LTD ACN 002 594 872 of 87 Adelaide Terrace, East Perth, Western Australia, (hereinafter called the "**Guarantor**") of the third part.

RECITALS:

- A.** The State, the Company and the Guarantor are the parties to the agreement dated 10 November 2004 which was ratified by and is scheduled to the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and which as subsequently varied is referred to in this Agreement as the "**Principal Agreement**".
- B.** The State, the Company and the Guarantor wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Ratification and operation

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).

- (3) The State must introduce in the Parliament of Western Australia before 30 April 2018 or a later date agreed by the parties to this Agreement a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 September 2018 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

2. Variations of the Principal Agreement

The Principal Agreement is hereby varied as follows:

- (1) in clause 1:
 - (a) by inserting after the definition of "approved proposal" the following new definition:

"Australian Consumer Law" means the *Competition and Consumer Act 2010*;
 - (b) by inserting after the definition of "LAA" the following new definition:

"LAA Minister" means the Minister for Lands, a body corporate under section 7 of the LAA;
 - (c) by deleting the definition of "Port Authority" and substituting the following new definition:

"Port Authority" means the Pilbara Ports Authority, being the body corporate having management and control of the Port under the Port Authorities Act;

- (d) in the definition of "Rail Safety Act" by deleting the words "*Rail Safety Act 1998*" and substituting "*Rail Safety National Law (WA) Act 2015*";
 - (e) by inserting after the definition of "said State" the following new definition:

"second variation date" means the date on which clause 2 of the variation agreement made on or about 12 March 2018 between the Honourable Mark McGowan, Premier of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time, the Company and the Guarantor comes into operation;
 - (f) by deleting the definition of "Trade Practices Act";
- (2) by deleting clause 4 and substituting the following new clause:
- "Obligations of the State"**
4. (1) The State shall subject to subclause (3) and the adequate protection of the environment (including flora and fauna) and the land affected (including improvements thereon) arrange for the issue of requisite authority under one or both of (as determined by the State in its discretion):
- (a) section 91 of the LAA; or
 - (b) section 182 of the LAA,
- to allow the Company to enter upon Crown land (within the meaning of the LAA and including, if applicable, land the subject of a pastoral lease but excluding land within the Port) to carry out all works to the extent reasonably necessary for the purposes of undertaking its obligations under clause 5(1) as applied pursuant to clause 12(2a).
- (2) For the purposes of paragraph (b) of subclause (1), section 182 of the LAA shall apply as if the Project (including a significant modification, expansion or other variation of it

for which detailed proposals are required) is a proposed public work for which the LAA Minister is under that section authorised to take interests in land within the meaning of that section.

- (3) The Company acknowledges that it shall be responsible for obtaining all consents of each person whose consent the LAA Minister (acting with the concurrence of the Minister in respect of any such Crown land the subject of a Government agreement) requires for the grant of any requisite authority referred to in subclause (1) and in a form and substance acceptable to the LAA Minister.";
- (3) in clause 7(3) by deleting paragraph (a);
- (4) by inserting after clause 9 the following new clause:

"9A. Local participation plan

- (1) In this clause, the term "local industry participation benefits" means:
- (a) the use and training of labour available within the said State;
 - (b) the use of the services of engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and contractors available within the said State; and
 - (c) the procurement of works, materials, plant, equipment and supplies from Western Australian suppliers, manufacturers and contractors.
- (2) The Company acknowledges the need for local industry participation benefits flowing from this Agreement.

- (3) The Company agrees that within 3 months after the second variation date it shall prepare and provide to the Minister a plan which contains:
- (a) a clear statement on the strategies which the Company will use, and require a third party as referred to in clause 21(2) to use, to maximise the uses and procurement referred to in subclause (1);
 - (b) detailed information on the procurement practices the Company will adopt, and require a third party as referred to in clause 21(2) to adopt, in calling for tenders and letting contracts for works, materials, plant, equipment and supplies and how such practices will provide fair and reasonable opportunity for suitably qualified Western Australian suppliers, manufacturers and contractors to tender or quote for works, materials, plant, equipment and supplies;
 - (c) detailed information on the methods the Company will use, and require a third party as referred to in clause 21(2) to use, to have their respective procurement officers promptly introduced to Western Australian suppliers, manufacturers and contractors seeking such introduction; and
 - (d) details of the communication strategies the Company will use, and require a third party as referred to in clause 21(2) to use, to alert Western Australian engineers, surveyors, architects and other professional consultants, experts, specialists, project managers and consultants and Western Australian suppliers, manufacturers and contractors to services opportunities and procurement opportunities respectively as referred to in subclause (1).

It is acknowledged by the Company that the strategies of the Company referred to in subclause (3)(a) will include strategies of the Company in relation to supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement.

- (4) During the currency of this Agreement the Company shall implement the plan provided under this clause.
 - (5) At the request of either of them made at any time and from time to time, the Minister and the Company shall confer as to any amendments desired to any plan provided under this clause and may agree to the amendment of the plan or the provision of a new plan in substitution for the one previously provided.
 - (6) At least 3 months before the anticipated submission of detailed proposals under clauses 12, 12A or 13 (or such lesser period as the Minister may, at the request of the Company, approve in respect of any such anticipated proposals), the Company must, unless the Minister otherwise requires, give to the Minister information about the implementation of the plan provided under this clause in relation to the activities to be the subject of such detailed proposals. This obligation operates in relation to all detailed proposals submitted on or after the date that is 4 months after the date when a plan is first provided under this clause.";
- (5) in clause 12(3):
 - (a) by deleting the word "and" after the words "subclause (2),"; and
 - (b) by inserting after the words "as referred to in clause 9" the words "and compliance with clause 9A";
 - (6) in clause 12A(3)(b) by deleting the first reference to "clause 9" and substituting "clauses 9 and 9A";
 - (7) in clause 13(3)(b) by deleting the first reference to "clause 9" and substituting "clauses 9 and 9A";
 - (8) by deleting clause 15(3) and substituting the following:

"The Company shall provide crossings for livestock and also for any roads, other railways, conveyors, pipelines and other utilities which exist in respect of land at the date such land is included in the Special Railway Licence or is made the subject of a Lateral Access Road Licence. In addition for the purposes of livestock and infrastructure such as roads, railways, conveyors, pipelines, transmission lines and other utilities proposed to cross the land the subject of the Special Railway Licence or land the subject of a Lateral Access Road Licence (as the case may be) the Company shall:

- (a) if applicable, give its consent to, and otherwise facilitate, the grant by the State or any agency, instrumentality or other authority of the State of any lease, licence or other title over land the subject of the Special Railway Licence or of a Lateral Access Road Licence (as the case may be) so long as such grant does not in the Minister's opinion unduly prejudice or interfere with the activities of the Company under this Agreement; and
- (b) on reasonable terms and conditions allow access for the construction and operation of such crossings and associated infrastructure,

provided that in forming his opinion under this clause, the Minister must consult with the Company.";

- (9) in clause 16(6) by deleting the words "Trade Practices Act" and substituting "Australian Consumer Law";
- (10) in clause 18(6) by deleting the words "Trade Practices Act" and substituting "Australian Consumer Law";
- (11) in clause 21:
 - (a) by inserting after subclause (2) the following new subclause:
 - "(2a) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party after the second variation date for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a

condition thereof that such third party shall undertake procurement activities in accordance with the relevant plan under clause 9A as and from the date of its provision to the Minister.";

- (b) in subclause (3) by inserting after the words "concerning its implementation of the provisions of this clause" the words "and of the relevant plan provided pursuant to clause 9A";
- (12) in clause 35(1) by deleting the number "1985" and substituting "2012"; and:
- (13) in clause 41 by:
 - (a) adding the words "and Submission to Jurisdiction" to the clause heading; and
 - (a) adding the following words after "State of Western Australia":

"and the parties to this Agreement submit to the jurisdiction of the courts of Western Australia in relation to any action or proceeding to settle any dispute or question arising out of or in connection with this Agreement".

3. Confirmation of Guarantee

The Guarantor confirms that its guarantee in favour of the State contained in clause 39 of the Principal Agreement shall continue notwithstanding the above-mentioned variations to the Principal Agreement.

EXECUTED AS A DEED.

SIGNED by **THE HONOURABLE**)
MARK McGOWAN, in the)
presence of:)

[Signature]
.....
Signature of witness

[Signature]
.....
Signature of **THE HONOURABLE**
MARK McGOWAN

JOSH JERGA
.....
Name of witness (block letters)

EXECUTED by **THE PILBARA**)
INFRASTRUCTURE PTY LTD)
ACN 103 096 340 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]
.....
Signature of director

[Signature]
.....
Signature of ~~director~~/company
secretary*
*delete whichever is not applicable

Elizabeth Gaines
.....
Name of director (block letters)

Cameron Wilson
.....
Name of ~~director~~/company
secretary* (block letters)
*delete whichever is not applicable

EXECUTED by FORTESCUE)
METALS GROUP LTD)
ACN 002 594 872 in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

[Signature]
.....
Signature of director

Elizabeth Gaines
.....
Name of director (block letters)

[Signature]
.....
Signature of ~~director~~/company
secretary*
*delete whichever is not applicable

Cameron Wilson
.....
Name of ~~director~~/company
secretary* (block letters)
*delete whichever is not applicable

[Schedule 3 inserted: No. 6 of 2018 s. 7.]

Notes

- ¹ This is a compilation of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004</i>	77 of 2004	8 Dec 2004	Act, other than Pt. 3: 8 Dec 2004 (see s. 2(1)) Pt. 3: 1 Jul 2008 (see s. 2(2) and <i>Gazette</i> 17 Jun 2008 p. 2543)
<i>Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2010 Pt. 2</i>	60 of 2010	10 Dec 2010	11 Dec 2010 (see s. 2(b))
<i>Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Act 2018</i>	6 of 2018	15 May 2018	s. 1 and 2: 15 May 2018 (see s. 2(a)); Act other than s. 1 and 2: 16 May 2018 (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
2010 variation agreement.....	3
2018 variation agreement.....	3
Agreement.....	3
LARL.....	7A(2)
scheduled agreement.....	3
SRL.....	7A(1)